The extent to which employers are implementing the Code of Good Practice on HIV/AIDS, as it relates to the Employment Equity and Labour Relations Acts.

A mini-dissertation submitted in partial fulfilment of the requirements for the degree

Magister Socialis Diligentiae: Social Work Management (Course work)

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by

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Declaration

I hereby declare that this dissertation is my own unaided work. It is being submitted for the degree of MSD Social Work Management at the University of Pretoria. I gave full acknowledgement of the sources that I have used.

_____ Date: _____

Dirk Willem van der Zel

Acknowledgement

I would like to dedicate this to my wonderful wife and our three children for being my inspiration.

SUMMARY

THE EXTENT TO WHICH EMPLOYERS ARE IMPLEMENTING THE GODE OF GOOD PRACTICE ON HIV/AIDS, AS IT RELATES TO THE EMPLOYMENT EQUITY AND LABOUR RELATIONS ACTS.

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This research was conducted on the extent to which employers believe they are implementing the Code of Good Practice on Key Aspects of HIV/AIDS and Employment (hereafter referred to as the Code of Good Practice). The motivation for the study arose as a result of the seriousness and prevalence of HIV/ AIDS within the working population, as well as the lack of knowledge as to what employers are doing to address this issue within the world of work.

An exploratory research design was used to evaluate the extent to which employers believe they are implementing to Code of Good Practice. A quantitative approach was used. A literature study examined the history of HIV/ AIDS, the definitions describing the pandemic and the social and legal aspects linked to the disease. For research purposes, a sample of twenty employers was purposefully chosen by the researcher. The questionnaire was completed by a representative of the aforementioned employers.

The data was analysed and a comparison was drawn between the literature study and the empirical findings. Conclusions and recommendations for future research were formulated as a result of the study. The findings of the study included, among other, that all employers experience risks related to discrimination against people who are HIV positive. The study also found that the majority of the employers had no practical measures in place to prevent this kind of discrimination. The study was limited in focus

to the Code of Good Practice and it is recommended that a bigger sample is needed to have a holistic view of the HIV/AIDS phenomena within the world of work in South Africa.

OPSOMMING

DIE OMVANG WAARTOE WERKGEWERS DIE KODE VAN BESTE PRAKTYK VAN MIV/VIGS TOEPAS, SOOS DIT BETREKKING HET OP DIE WET OP GELYKE GELEENTHEDE EN ARBEIDVERHOUDINGE.

DEUR

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Hierdie navorsing is onderneem om die omvang waartoe werkgewers die Kode van Beste Praktyk toepas te ondersoek. Die motivering vir die studie is gegrond in die ernstigheid en voorkoms van MIV/VIGS in die werk plek, en die gebrekkige kennis rondom die wyse waarop werkgewers hierdie aspek hanteer. ‘n verkennende navorsings ontwerp is gebruik om die mate waarin werkgewers die Kode van Beste Praktyk toepas te ondersoek. Die literatuurstudie ondersoek die historiese ontwikkeling van MIV/VIGS, en definieer die pandemie asook die sosiale- en gekoppelde regs-aspekte van die siekte. Die navorsing is gedoen onder twintig werkgewers wat vir die doel van die ondersoek deur die navorser gekies is. Die vraelys is deur verteenwoordigers van die werkgewer voltooi

Die data is geanaliseer en vergelykings is getref tussen die literatuur studie en die empiriese bevindings. Gevolgtrekkings en voorstelle vir toekomstige navorsing is geformuleer as ‘n resultaat van die studie. Die studie was beperk tot die fokus van die Kode van Beste Praktyk en die bevindinge sal nie veralgemeen kan word in die konteks van Suid Afrikaanse werkgewers nie.

LIST OF KEY TERMS

HIV

AIDS

CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS AND EMPLOYMENT

HIV TESTING

EMPLOYEE

EMPLOYER

LABOUR LAW

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GENERAL ORIENTATION TO THE STUDY

1.1 INTRODUCTION

The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems. HIV/AIDS could be responsible for five million deaths by 2011 and this figure could rise to nine or ten million by 2021 according to Prof. Carel Van Aardt of the Bureau of Market Research at the University of South Africa. In a projection of the South African population from 2001-2021, Van Aard (2004:11) indicated that the total number of AIDS-related deaths a year, between 2007 to 2011, was expected to exceed 500 000 per year.

These figures clearly indicate that HIV and AIDS will definitely have an affect on every workplace. HIV/AIDS will not only be economically impacting on absenteeism, productivity and production cost but will also affect staff illness, employee benefits, occupational health and safety. There are also psychosocial issues linked to the epidemic such as workplace morale, prejudice, discrimination and stigmatisation. Furthermore, employers could also face legal action in the shape of unfair labour practices, unfair dismissals or HIV/AIDS related liabilities should employers not adhere to current legislation as set out within the following acts: Employment Equity Act, No 55 of 1998; Labour Relations Act, No 66 of 1995; Occupational Health and Safety Act, No 85 of 1993; Compensation for Occupational Injuries and Diseases Act, No 130 of 1993; Mine

Health and Safety Act, No 29 of 1996; Basic Conditions of Employment Act, No 75 of 1997; Medical Schemes Act, No 131 of 1998; and Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000.

One of the best ways to reduce and manage the impact of HIV/AIDS in the workplace is through the implementation of HIV/AIDS policies and programmes. Occupational social workers are probably best equipped to initiate and manage such programmes, because of their sociological understanding of the world of work combined with the needed knowledge and skills to deal effectively with social problems.

Occupational social workers are trained to empathetically assess and support both the individual in the workplace and larger systems through a multi-dimensional and a holistic consultative approach. They are not only capable of helping workers to balance the world of work and the world of family but they are also able to assist employers, examining various organizational and human dynamics impacting on the world of work (Straussner, 1990:14).

The HIV/AIDS –factor is surrounded by controversy, public concern, and lack of understanding. Estimates by the joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization indicate that by the end of 1999 over 30 million people were already infected with HIV (27 million of whom did not know their HIV status), and that 12.7 million people around the world had already lost their lives to the disease. The virus continues to spread causing nearly 16,000 new infections a day

(Lindsey, 2001:2-1). The true escalation and extent of the problem can only be seen if we look at the same actual figures four years later. In 2004 close to 38 million adults and children are living with HIV worldwide – an increase from 35 million in 2001. In 2004 over 20 million people have died of AIDS over the past two decades. (UNAIDS 2004:21)

Using the Code of Good Practice as a diagnostic evaluation tool on key aspects of HIV/AIDS the researcher will give an indication regarding the extent to which Gauteng-based employers, who are registered as members of Guardian Employers Organization, are implementing programmes and policies to manage the AIDS pandemic. The Code of Good Practice focuses on the key aspects of HIV/AIDS and its relation to the workplace. It is a legislative guide for employers as to how to effectively deal with HIV/AIDS in the workplace.

1.2 MOTIVATION FOR THE STUDY

The researcher is currently working with the Guardian Employers Organization (GEO). The GEO is an employers' organization registered in terms of the Labour Relations Act. The GEO provides its members with a full range of Labour Law and Human Resources services that includes representation at the CCMA (Commission for Conciliation, Mediation and Arbitration), Labour Court and Labour Appeal Court and to assist with aspects of employment equity implementation and skills development, ensuring that the employer complies with current Labour Law Legislation.

The researcher aims to explore how this specific group of employers view their present situation with regard to the issue of HIV/AIDS within the workplace when compared to the Code of Good Practice on HIV/AIDS. The researcher aims to explore employers' views regarding the following topics or themes:

- Unfair discrimination in the workplace based on HIV status.
- Promotion of a non-discriminatory workplace where people living with HIV/AIDS are able to be open about their HIV status without fear of stigma or rejection
- Promotion of appropriate and effective ways of managing HIV in the workplace
- Creation of a balance between the rights and responsibilities of all parties.
- Knowledge, skills and resources available to manage HIV/AIDS in the workplace

Information regarding these topics or themes could highlight possible areas of concern, current problems and trends that exist within the work environment. The proposed study might indicate the need for specific interventions, such as specialised management and/or supervision training. It could also assist employers in formulating policies and programmes to effectively handle HIV/AIDS in ways that would not only prevent costly industrial relations action, but that could enhance the productivity and motivation of employees.

The study could further serve as an instrument to continually evaluate the progress made by employers regarding their ability (or the ability of managerial staff) to effectively deal

with the issue of HIV/AIDS in the workplace. Lastly the study could indicate the need for specific interventions such as Employee Assistance Programmes.

The researcher hopes that by asking employers what they are doing regarding HIV/AIDS, would prompt employers to wonder what action they should be taking. Actively thinking about their actions or omissions would be in itself a huge step forward to plan and manage HIV/AIDS in the workplace.

Within the world of work there is always the danger of victimization, discrimination and unfair labour practices including unfair dismissals. Behaviour of this kind by managers or supervisors could lead to costly industrial relations actions, including but not limited to disciplinary hearings, wrongful dismissals and legal costs. It is also true that omitting to take action could have negative effects within the workplace. Ineffective management of employees living with HIV/AIDS could also lead to decreased efficiency of work teams, loss of productivity and increased conflict and tension within the workplace.

1.3 PROBLEM FORMULATION

Bless & Higson-Smith (1995:29) indicates that a well-formulated problem is already a half-solved problem. Several authors (compare Babbie, 1990:61; Bailey, 1996:28; Mouton & Marais, 1992:32) also agree and indicate that problem formulation is a process of reducing and sharpening a problem until it is clearly formulated. To better understand

or sharpen the problem of HIV/AIDS in the workplace one then needs to consider the following:

There is a lack of knowledge regarding the extent to which employers are implementing the Code of Good Practice as it is relates to the Employment Equity Act, No 55 of 1998 and Labour Relation Act, No. 66 of 1995. The researcher is struck by the variety of attitudes and perceptions that different employers hold regarding HIV/AIDS. Attitudes of employers range from "let's wait and see" to genuine concern for their employees affected, but an apparent inability to convert those concerns into concrete action.

The impact of the epidemic is unique. According to Kinghorn (2000:23) it principally affects young and middle-aged adults between 20 and 44 years of age. This is not only the sexually most active years for individuals, but also their prime productive and reproductive years. Walker, Reid & Cornell (2004:15) indicated that in 2000, it was estimated that there were 2.5 million HIV positive woman aged 15-49, and 2.2 million HIV positive men aged 15-49 in South Africa. The authors further indicate that in the period 2000 to 2010 between four and seven million South Africans may die of AIDS-related illnesses. The number of AIDS deaths will be much larger than the number of those due to any other single cause. It will be almost double the number of deaths from all other causes combined over that period. The researcher is of the opinion that the workplace is thus a critical platform to be used to address the issue of HIV/ AIDS because most people affected are economically active.

In this study the researcher does not plan to study the economic impact of AIDS on the employer. The study will also not describe the current impact of AIDS within South African workplaces. The researcher would however, explore the extent to which employers believe they are implementing the Code of Good Practice as set out within the Employment Equity Act, No 55 of 1998.

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment is a code of good practices that is attached to the Employment Equity and Labour Relations Acts. It is a guide or standard setting out the content and scope of an appropriate response to HIV/AIDS in the workplace. Section 54 of the Employment Equity Act gives the Minister of Labour power to issue any code of good practice with the aim that these codes are to be used to help employers, employees and trade unions in the implementation of the Act.

In the light of the above factors, the problem in this study can be formulated as follows:

HIV/AIDS is a serious problem in the South African workplace and employers do not always know how to deal with this issue effectively within the legal limitations.

1.4 GOAL AND OBJECTIVES OF THE STUDY

1.4.1 Goal of the Study:

According to De Vos, Schurink and Strydom (1998:7), a goal is a broader, more abstract conception of the end toward which effort or ambition is directed, while objective denotes the more concrete, measurable and more speedily attainable conception of such end toward which effort or ambition is directed.

The goal of this study is to obtain information regarding the extent to which employers believe they are implementing the Code of Good Practice on HIV/AIDS within their respective workplaces.

1.4.2 Objectives of the Study:

The objectives of the research were:

- To describe the theoretical framework of the HIV/AIDS pandemic and its impact in the work place.
- To explore and evaluate the employers views regarding the extent to which they are conforming to the Code of Good Practice on HIV and AIDS.
- To provide recommendations to employers, who are registered with the Guardian Employers Organisation, based on the information gained.

1.5 RESEARCH STATEMENT

Mouton and Marais (1990:4) define statements as sentences in which an identifiable epistemic (knowledge) claim is made. However propositions, or truth statements, need to be tested against reality before they can be accepted as valid theory or part of valid theory. When a researcher empirically test or evaluates such a proposition, it becomes a hypothesis (De Vos 2002:35). De Vos (2002:36) continues and state that propositions and a hypothesis are basically the same thing, except that a proposition states, "This thing is so", while a hypothesis asks, "Is this thing so?"

The researcher formulated the proposition as follow:

"HIV/AIDS is a serious problem in the South African workplace and employers do not always know how to deal with this issue effectively within the legal limitations."

1.6 RESEARCH METHODOLOGY

1.6.1 Research approach

The researcher makes use of a quantitative approach. The quantitative paradigm is based on positivism, which takes scientific explanation to be nomothetic. Its aims are to measure the social world objectively, to test hypothesis and to predict and control human behaviour. A quantitative study may therefore be defined as an inquiry into a social or human problem, based on testing a theory composed of variables, measured with numbers and analysed with statistical procedures in order to determine whether the

predictive generalisations of the theory hold true (Cresswell in De Vos 2004: 79). The researcher chooses this approach because the study aims to numerically evaluate the extent to which employers believe they are implementing the Code of Good Practice.

The researcher will need very specific information, to determine the degree of effective management of HIV/AIDS in the workplace. This approach will also allow the researcher to compare specific factors with each other. Because the research is evaluative in nature, the data need to be formulised to allow for numerical analysis and comparison.

The quantitative approach will be used because the researcher needs to explore and gather knowledge of the subject. All questions, in the questionnaire, will thus be knowledge based and will, because of its evaluative nature, be strictly formulised according to the literature research. Self-administered questionnaires will be issued to a selected group of employers in Gauteng province.

1.6.2 Type of research

Evaluative research (specifically diagnostic evaluation) will be used to explore the extent to which selected employers are managing HIV/AIDS (in comparison with the Code of Good Practice) within the workplace, using the perspective of the employer. Bless & Higson-Smith (1995:47) indicates that social interventions would benefit from evaluation research in that this type of research could be used as a diagnostic tool. The researcher intends to use evaluative research as the first phase of a process that could result in the development and implementation of a specific intervention within the workplace to

address the issue of HIV/AIDS. (The design, implementation and evaluation of this specific intervention will, however, not form part of this research project.)

"Diagnostic evaluation is a technique for gathering data which is crucial in the planning of a new project" Bless & Higson-Smith (1995: 48). In this study the researcher will aim to evaluate the management of the phenomenon of HIV/AIDS in the workplace against a specific guideline, namely the Code of Good Practice on HIV/AIDS.

1.6.3 Research design

A research design is the blue print or detailed plan outlining how a research study is to be conducted. This plan or blue print provides a framework in which data can be collected in order to investigate the research hypothesis or question in the most economical manner (De Vos, 2002:137).

The research design that was used in this study is an exploratory research design. Employers' knowledge and perceptions relating to HIV/AIDS as a phenomenon within the workplace were explored in this study. The researcher has attempted to provide a preliminary study on the topic of HIV/AIDS in the workplace in specific relation to the Code of Good Practice that may be used for future more structured and in-depth research study. De Vos (2002:139) describe this investigation prior to a more structured study as one of the aims of the exploratory design. The pre-experimental, hypothesis-developing or exploratory designs are of a more qualitative nature, and the data collection method would be observations and/or unstructured or semi-structured interviews. Although this

study is quantitative in nature and data was collected using a questionnaire it is still hypothesis-developing in nature and thus applicable to an exploratory research design.

Royse (1995a:50) and Bless and Higson-Smith (1995:42) adds that exploratory research designs are often used where there is little information about the topic. The purpose of exploratory studies is to gain insight into a situation, phenomenon, community or person. (Compare Babbie & Mouton, 2001: 78.). This is appropriate for the proposed study as there is very little research in South Africa on the management of HIV/AIDS within the workplace.

1.7 RESEARCH PROCEDURE

Grinnell (1988: 394) suggested initially that research procedure and strategy develop in four phases:

- Phase one – Problem identification, definition and specification
- Phase two – Generation of alternatives and selection of alternatives
- Phase three – Implementation
- Phase four – Evaluation and dissemination of findings

De Vos (2002:85-86) elaborated on this process dividing it into the following phases:

Phase 1: Selection of a researchable topic

Phase 2: Formal formulations

Phase 3: Planning

Phase 4: Implementation

Phase 5: Interpretation and presentation.

The researcher utilised this process that included a literature study that was undertaken followed by the collection of data using hand delivered questionnaires. De Vos (2002: 165) says that quantitative data collection methods often employ measuring instruments and indicates that one of those measuring instruments include the use of questionnaires. Hand delivered questionnaires allow respondents to complete them in their own time and to clarify any problems with the fieldworker on his/her return (De Vos 2002:174).

This method of data collection was thought to be the most appropriate to be used because some of the questions might require the employer to investigate, reflect and consult before answering the question. Employers might have to confirm the existence of systems and policies with his/her Human Resource department for example, before answering the questionnaire.

According to Bless and Higson-Smith, the main disadvantage of this method is the poor level of literacy and familiarity with the language used within developing countries (Bless & Higson-Smith, 1995:112). The researcher believes, however, that this would not be a problem where employers in the formal business sector of South Africa, will be expected to complete the questionnaire.

All the questions were analysed manually and the information was then summarised. The size and the complexity of the study did not warrant computer analysis of the

questionnaires. The findings of the study have been documented, including conclusions and recommendations.

1.7.1 Pilot study and pilot test

The pilot study is viewed as a prerequisite for the successful implementation and completion of a research project. The pilot study is defined as the "…process whereby the research design for a prospective survey is tested." The purpose of the pilot study is to explore the feasibility of the planned research project and to bring possible deficiencies in the measurements procedure to light (De Vos, 1998:179).

De Vos (2002:215) argues that the pilot study should be completed in the same manner as the main investigation is planned and suggest that by reviewing the proposed questionnaire with a few respondents, possible difficulties and problems may be identified and can be corrected before the pilot study is conducted.

A pre-test was conducted on 2 employers who were not selected to be part of the study but who are likely to resemble characteristics of employers who are represented in the sample. There were no changes to the questionnaire as a result of the pre-test.

1.7.2 Literature study

The aim is to find out what research has been done in this field of study. This includes a review of different theories, models and studies done regarding AIDS in the workplace

Mouton (2001:87) gave the following reasons why the literature review is important:

- To ensure that one does not merely duplicate a previous study
- To discover what the most recent and authoritative theorizing about the subject is
- To identify the available instrumentation that has proven validity and reliability
- To ascertain what the most widely accepted definitions of key concepts in the field are.

1.7.3 Overview of feasibility of the study

According to Rubin & Babbie (1993:102) one of the most difficult problems confronting researchers is how to make a study feasible without making the research question so narrow that it is no longer worth doing or without sacrificing to much rigor or inferential capacity. To ensure that the study is feasible the researcher confined the study to 20 Gauteng-based employers, from a list of more than 200 national employers that have received services from an employer organisation. Practically it will be possible for a researcher to travel to 20 different employers within a province as big as Gauteng, thus rendering the study feasible.

There were some financial implications in travelling to the different employers and using the internet as a research tool. Other costs related to stationary and printing.

1.8 DESCRIPTION OF RESEARCH POPULATION AND SAMPLING METHOD

The population was drawn from a pool of employers. The population is described as: "The entire set of objects and events or group of people which is the object of research and about which the researcher wants to determine some characteristics is called the population" (Bless & Higson-Smith; 1995:85). This is in accord with Neuman (1997:202) who is of the opinion that the research population and the sampling method are the researcher's attempt to draw from a larger pool of cases or elements. This may include people, organisations or certain elements that are being measured. In this study the proposed population will be all (Gauteng-based) employers who have in the past received services or are members of the Guardian Employers Organization.

The following will then be the definition of the sample selected: " The subset of the whole population which is actually investigated by a researcher and whose characteristics will be generalised to the entire population is called a sample" Bless & Higson-Smith (1995:86).

Doing sampling means that the researcher will not be able to tell with *certainty* that the findings are true for the whole population but rather that it would *probably* be true. The researcher will thus do cluster sampling in that only employers from a certain employers organization will be included and only those in a specific geographical area. The sample that the researcher will use is 10% or 20 employers from the population.

To get to this sample the researcher will choose respondents who best fit the purpose of the investigation. A non-probability purposive sampling method was used. De Vos (1998:198) defines this type of sampling method as follows: " This type of sample is based entirely on the judgement of the researcher, in that the sample is composed of elements which contain the most characteristics representative or typical attributes of the population".

The researcher selected employers according to the following criteria:

- Their working area is within Gauteng province
- That they represent different sizes of company (small, medium and large)
- That they represent a diversity of employment sectors e.g. manufacturing, transport and catering

1.9 ETHICAL ISSUES

Ethics are defined by Strydom (in De Vos 1998:24) as "…a set of moral principles which is suggested by an individual or group, is subsequently widely accepted, and which offers rules and behavioural expectations about the most correct conduct towards experimental subjects and respondents, employers, sponsors, other researchers, assistants and researchers". The following are the ethical issues that the researcher will examine in relation to his study.

Confidentiality will be an ethical issue that would need to be considered.

The researcher will collect all completed questionnaires by hand to ensure that employer's perceptions regarding HIV/AIDS in the workplace are not made known to any parties. As a result of the existing work relationship, employers trust GEO with sensitive issues such as negotiations, contractual disputes and other disciplinary matters. Should there be any aspects (processes or policies) identified by the researcher that might require attention, GEO will consult with the particular employer and support the employer to address the issue. Signed consent was given by Director of GEO (Appendix A)

Information regarding strategies and programmes might partly improve an employers' competitive advantage. Competing companies might be interested in the amount of money spent on preventative, education and treatment programmes offered by other companies. By collecting questionnaires by hand I will ensure that this information is kept confidential.

The researcher is aware that unethical behaviour could result in potentially damaging an employer's reputation, business interests or potentially emotionally hurt him/her or their employees. To avoid this, the researcher will follow clear ethical guidelines.

The researcher will therefore ensure the following:

- Not to harm any experimental subject or respondent by informing respondents of any possible emotional risks in disclosing information regarding HIV/AIDS in the workplace. (For example: Should the employer become aware that they are doing

nothing to support staff who might be suffering from AIDS the employer might experience feelings of guilt.)

- To ensure that employers give their informed consent (Appendix B) in the research process. The researcher will ensure that employers receive adequate information regarding the purpose and goal of the study. Each employer will also have an opportunity to choose a fictitious name for his/her company should it be necessary to refer to a specific company in the dissertation. In this way the privacy of employers will not be violated.
- All information will be a true reflection of the data gathered, and no form of deception will be used.
- The researcher will ensure that he is competent, scientific and logical in his approach regarding managing the research process including data collection and analysis. Any co-operation with collaborations will be ethically sound. Here for example, the researcher will ensure that information will be objective and not manipulated to support the views of GEO, or any specific organization.

The findings will be accurate, clear and objective, and should there be any indication for the need of restoration the researcher will arrange it to be done. Restoration could include therapeutic counselling if a specific manager or employer has experienced emotional trauma linked to the study. (This is highly unlikely, but will be available should it be needed)

1.10 ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
EEA	Employment Equity Act
GEO	Guardian Employers Organization
HIV	Human Immunodeficiency Virus
LRA	Labour Relations Act
Code	Code of Good Practice On Key Aspects Of HIV/AIDS.

1.11 DEFINITION OF KEY CONCEPTS

AIDS - AIDS is the acronym for "acquired immunodeficiency syndrome" clinical definition given to the onset of certain life-threatening diseases in an individual whose immune system have ceased to function properly as a result of HIV.

The United States Centre for Disease Control defines AIDS as a medical condition, which occurs in HIV-infected persons who develop certain opportunistic infections. AIDS is thus not a specific sickness, it will be better to describe it as a group or combination of many different symptoms or conditions that exist within the affected body as a result of the HIV virus weakening the body's immune system Van Dyk (2001:5).

AIDS is in itself not a disease it is better described as the final stage of HIV infection.

AIDS could be described as the stage reached where an HIV-infected person's body no longer have the ability to fight off or defend itself successfully against opportunistic diseases.

HIV - "Human immuno deficiency virus"

HIV belongs in the family of viruses known as retroviruses, scientifically called *Retroviridae.* All members of this family have the ability to produce latent infections. HIV is in a virus group called the lentiviruses. These develop over a long period, producing diseases, many of which affect the immune system and the brain (Barnett & Whiteside 2002:30)

The virus attacks and ultimately destroys the body's natural immune system.

HIV testing - Doing a medical test to establish a person's HIV status. This may include written or verbal questions, inquiring about previous HIV tests; questions related to the assessment of "risk behaviour"; and any other indirect or direct methods designed to ascertain an employee's or job applicant's HIV status (RSA, 2000:4).

Barnet & Whiteside (2002: 34) explain that most screening and diagnostic tests are based on discovery of antibodies rather than the virus. People are said to be HIV positive when the HIV antibodies are detected in their blood.

HIV testing includes the use of body fluids to determine whether or not the HIV virus or HIV- antibodies is present within a particular person.

Employers organization- Any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers, employees or trade unions (Grogan 2001: 32).

It could also be defined as the opposite or counterpart of trade unions.

Employee "Employee" is defined in the BCEA and LRA as:

a) any person, excluding an independent contractor, who works for another person or for the State, and who receives, or is entitled to receive, any remuneration; and

b) any person who in any manner assists in carrying on or conducting the business of the employer (LRA, 66 of 1995).

Employee could be defined as a person who sells his or her skills, abilities or services to another person.

Code of Good Practice	Code of Good Practice on key aspects of HIV/AIDS and employment as set out within the Employment Equity Act, No 55 of 1998 and Labour Relations Act, No 66 of 1995.
	A legal guideline for employers on the appropriate response to HIV and AIDS within the workplace.

1.12 LIMITATIONS OF THE STUDY

- The use of a questionnaire that was directly linked to the Code of Good Practice was a limitation in that it limited the amount of information that could be gathered. This approach eliminated discussion and brainstorming around the issue of HIV/AIDS within each organisation. A combined quantitative and qualitative approach might need to be considered in future studies in order to acquire a holistic view of the management of HIV/AIDS in the workplace.
- The size of the sample was also a limitation as it made it impossible to generalise findings but it was sufficient for the purpose of this research process.

- A further limitation was the lack of South African literature on the effects of HIV/AIDS on organisations. This indicates an urgent need for further research on this subject within the world of work in South Africa.

1.13 CONTENTS OF THE RESEARCH REPORT

The research report for this study consists of four chapters that have been divided as follows:

- Chapter 1: General orientation
- Chapter 2: HIV/AIDS in the workplace
- Chapter 3: Empirical study
- Chapter 4: Summary, conclusion and recommendations

1.14 SUMMARY

Chapter one provides an introduction to the research study on the extent to which employers are implementing the Code of Good Practice on HIV/AIDS. The motivation for the study is based on the seriousness and prevalence of the problem in South Africa as well as a lack of knowledge as to how to address the issue effectively within the workplace. The problem in this research study has been formulated as follows: "HIV/AIDS is a serious problem in South Africa and employers do not always know how to deal with this issue effectively within the legal limitations."

The goal of the study was to explore the extent to which employers are implementing the Code of Good Practice. The objectives of the study included conducting a literature study, investigating the extent to which employers believe they are implementing the Code of Good Practice by means of a questionnaire and drawing conclusions and making recommendations for practice.

The chapter then explains the quantitative research approach that was used and describes the type of research that was used, being evaluative research. The research design, which provides a blueprint of how this study was conducted, was an exploratory design. The pilot study also described, including an explanation on how the literature study was compiled, the feasibility of the study as well as how the questionnaire was piloted.

The chapter then provided a description of the research population and the sampling method. The researcher used a non-probability sampling method to obtain a sample. The sample of 20 employers was drawn from all employers in the Gauteng area who received services from an employer organisation.

This chapter was concluded with a description of the ethical issues and an explanation on how these ethics would be upheld in the study. Key terms, acronyms and abbreviations were also provided together with an outline of the content of the research report.

CHAPTER 2
HIV/AIDS IN THE WORKPLACE

2.1 INTRODUCTION

AIDS is the most serious, unsolved health crisis to face the world this century. Along with poverty, unemployment and crime it is the most serious problem facing South Africa today. HIV/AIDS also poses a threat to South African companies. If the country were to overcome the pandemic the economic sector must play a pivotal role in the fight against HIV/AIDS. AIDS is a killer-virus and all efforts should be made to stop the spread of the virus and to control it in spite of the fact that there is neither a vaccine nor a cure to assist in these efforts.

AIDS is not purely a biomedical phenomenon - it has important social, psychological, political, economic and legal dimensions as well. Therefore all stakeholders should be involved in the battle against HIV/AIDS. This was echoed at the "South African AIDS conference 2003". Here it was indicated that the difference in this conference was that it brought together scientists, the community, civil activists, researchers, medical professionals, government departments, NGO's, industry specialists, international organisations, businesses and the media. All of which shared their ideas around the critical theme of taking action against AIDS. S. Stevens, UN special envoy for HIV/AIDS, indicated during this conference that Africa is entering a "desperately difficult period" saying that the "worst is yet to come", as the continent sees a rapid increase in the incidence of full-blown AIDS (Farham 2003:8).

The review of literature in this chapter will be divided into sections representing important aspects relevant to the development of legal and managerial guidelines and focussing on best practices from companies on how to manage HIV/AIDS effectively. The literature consulted should be seen as the building blocks for a knowledge base and a

framework from which the study is carried further and interpreted. The literature study will focus on the following:

- Brief historical background of HIV/AIDS
- Defining HIV/AIDS
- Socio- economic implications for employers
- Labour and legal implications for employers
- Code of Good Practice: Key Aspects of HIV/AIDS and employment
- HIV testing
- Managing AIDS in the workplace

2.2. BRIEF HISTORICAL BACKGROUND OF HIV/AIDS

It is estimated that this disease has been around longer than 30 years but fewer than 100 years. In Africa it was originally known as Slims. One theory is that that the disease originated in Central Africa and spread from the Green or Simian monkey to humans, probably through a hunting accident. Simian monkeys carry a similar retrovirus called SIV. Once in the human body the virus mutated and became the HIV that we recognize today. However the virus is continuing to mutate – producing an increasing number of varieties and sub-strains. The following historical information has been derived from the Services SETA's Employee Assistance Programme as presented at the 2003 Conference (EAP Toolkit 2003: 6-7):

1981 - 1985

The first case of AIDS was identified in June 1981 in the USA after a drug technician at the Centre for Disease Control (CDC) noticed the high number of requests for the drug used to treat Pneumocystis carinni pneumonia (PCP). PCP is a protozoon associated with a severe immune deficiency. This led to a scientific report of PCP occurring unusually in

five Los Angeles gay men. All were severely immune deficient. Later in the year the first cases of PCP appeared in drug addicts.

In 1982 the syndrome was called Grid (Gay-Related Immune Deficiency) but later renamed AIDS (Acquired Immune Deficiency Syndrome) because it clearly did not just affect gay men. At that stage AIDS had been reported in 14 nations including Central and South America, South Africa and Australia. In 1983 two AIDS epidemics were reported in Europe and the first death from AIDS was recorded in Melbourne. By now AIDS had been reported in 33 countries.

In 1984 the US Health and Human Services Secretary, Margaret Heckler, made a statement saying that "There will be a vaccine in a very few years and a cure for AIDS before 1990." Late in 1984 the Human Immunodeficiency Virus was isolated at the Pasteur Institute in Paris. During this time AIDS was found in Central Africa and Malaysia. The first public figure actor Rock Hudson died in 1985 from AIDS. By the end of this year AIDS had been reported in 51 countries including China.

1986 – 1989

Russia, the East and North Africa reported their first cases of AIDS in 1986. The following year a total of 62811 cases of AIDS were reported from 127 countries. In 1988 the World Health Organization's (WHO) Global Programme on AIDS instituted World AIDS Day as an annual event on December 1 each year. 1989 saw the US passing legislation to make the drug AZT available to people living with AIDS.

1990- 1995

By December 1990 over 307 000 AIDS cases had been reported to the WHO, but the actual number was estimated to be closer to a million. The red ribbon was launched in 1991 as an international symbol of AIDS awareness. In 1992 tennis star Arthur Ashe announced he was HIV-positive and he died a year later. AIDS has now been found in virtually every single country in the world. Russian ballet star Rudolf Nureyev died of AIDS in 1993. Tom Hanks won an Oscar in 1994 for playing a gay man with AIDS in

the movie Philadelphia. Also in 1994 AIDS became the leading cause of death among Americans between the ages of 25 and 44. In 1995 the WHO's global programme on AIDS was closed and replaced by UNAIDS.

1996-2000

1996 UNAIDS reported that the number of HIV infections declined in many countries due to safer sex practices. However, in 1997 UNAIDS reported that the HIV epidemic was far worse than thought. It was estimated that 2.3 million people had died of AIDS, 50% more than in 1996. In 1998 UNAIDS estimated that a further 5.8 million people had become infected with HIV; half of them under the age of 25. It was also estimated that 70% of all new infections and 80% of all deaths were occurring in sub-Saharan Africa. According to the annual World Health Report in 1999, AIDS had become the fourth biggest killer worldwide. By then, 33 million people were living with HIV/AIDS. In 2000 AIDS deaths totalled 3 million. Of these, 2.4 million deaths occurred in Africa. At the end of 2000 4.7 million South Africans were already HIV-positive, and an estimated 34 million world wide and half of them were of the age group of 15-24 years.

2001-2004

2001, December – The Treatment Action Campaign (TAC) brings a court case against the South African Government. The Pretoria High Court orders the South African government to provide antiretrovirals (ARVs) to all HIV-positive pregnant women. In his judgement, Justice Chris Botha said the government should provide a programme on how they will extend their mother-to-child transmission (MTCT) prevention scheme by the end of March 2002. The government's MTCT programme was initially restricted to 18 national pilot sites. Doctors at state hospitals which were not part of the pilot sites were not allowed to prescribe Nevirapine.

2002, 21 January - The KwaZulu-Natal provincial government announces that HIV-positive pregnant women in state hospitals will receive Nevirapine. KwaZulu-Natal

becomes the second province, after the Western Cape, to defy government policy by making the drug available.

2002, 28 March - The government announces it will appeal against the Pretoria High Court judgement, ordering them to provide Nevirapine to HIV-positive pregnant women, in the Constitutional Court.

2002, 5 April - The Constitutional Court upholds the 2001 High Court decision ordering the state to roll out Nevirapine. It points out that by restricting Nevirapine to 18 pilot sites, government is violating the constitutional rights of women and their babies.

2002, 17 April - Government announces that survivors of sexual assault and rape can finally receive ARVs. A hospital superintendent had earlier been discharged for insubordination because he had accommodated the Greater Nelspruit Rape Intervention Project (GRIP) in his facility. GRIP was the first NGO to provide antiretroviral prophylaxis for rape survivors in cooperation with doctors.

2002, 26 April - The Global Fund to Fight AIDS, TB and Malaria awards the country a US $165.2 million grant. Minister Tshabalala-Msimang blocks the US $72-million grant awarded to KwaZulu-Natal, saying the province should not have approached the fund directly.

2002, October - During the launch of its "Campaign of Hope" on AIDS, cabinet issues a statement acknowledging that ARVs could "improve the condition of people living with HIV/AIDS" and says government is addressing challenges such as drug prices "to make it feasible and effective to use antiretrovirals in the public health sector."

2003, 27 February - Finance Minister Trevor Manuel announces plans to almost double the amount spent on HIV/AIDS. Over the next three years, R3.3 billion (US $400 million) will go towards extending preventative programmes and finance "medically appropriate" treatment for HIV/AIDS.

2003, April - Global Fund executive director Richard Feachem flies into the country expecting to sign an agreement allowing the grant money to be released. The government blames last minute hitches and there is no signing. "This is very disappointing. The work is urgent and the money needs to flow - the delay in money means a loss of human lives. These are life and death issues," Feacham was quoted saying.

2003, August – Dr. Zwele Mkize (MEC for Health in KwaZulu-Natal) announces at the South African AIDS Conference in Durban that the government is committed to a comprehensive plan of AIDS treatment for the country. President Thabo Mbeki signs the Global Fund agreement which will provide a large amount of funding for treatment of HIV and AIDS.

2003, November – First South African specific Aids vaccine trials started. The vaccine was designed by University of Cape Town scientists. It involved 48 volunteers divided between the US and South Africa and aims to determine the safety and immune responses of the US Alphavax clade C candidate HIV-1 vaccine for the first time. South-Africa may have to wait another 10 years for an Aids vaccine, but once it is developed it will be tailor made for the strain of HIV commonly found in South Africa (Russouw 2003, 3).

2004, March – Government formally starts a national role-out of anti-retroviral treatment. A plan for the management, care and treatment of HIV/Aids will be implemented at facilities in Gauteng, the Free State, KwaZulu-Natal, Limpopo and Mpumalanga, said departmental spokesperson Sibani Mngadi (www.news24.com/news24/Aids_focus/).

2004, June – South Africa attended the Bangkok International Aids conference and chose to question the effectiveness of nevirapine (in the light of the resistance developed to the drug) instead of gaining support for the national roll-out and fight against HIV/AIDS. At the conference it was said that $ 12 billion (US) will be needed by 2005 to effectively fight HIV/AIDS in developing countries – but currently annual global

spending amounts to less than half this amount needed (US$ 5 billion). By 2007, an estimated US$ 20 billion will be needed (www.news24.com/news24/South_Africa/Aids_Focus/0,,2-7-659).

2004, July - The combat readiness of the South African defence force were questioned when a study revealed that 89 percent of the soldiers who volunteered for testing tested HIV positive.

The study involved Voluntary Counselling and Testing (VCT) of 1089 soldiers during the first 6 months of on ongoing programme. The average age of the sample was 34, and 60 percent of volunteers were married. An overwhelming 89 percent of the soldiers who volunteered for testing were HIV-positive. In the news article, following a conference where the aim was to establish the rate of infection and the effects of anti-retroviral treatment on South Africa's military forces, Rear Admiral JE Engelbrecht indicated the following: Soldiers in the early stages of the disease were absent for an average of 20 days a year. This increased to 45 days for soldiers displaying symptoms, and 120 days for those with full-blown AIDS. Conservatively, 18 940 days will be lost by the 947 soldiers identified on the programme. In 2004 the SANDF's official figure for HIV/AIDS-infected soldiers stands at 23 percent but AIDS specialists have indicated that a more realistic figure will be about 40 percent or about 28 000, infected. With this figure in mind and only considering the one aspect namely working days – the number of working days lost each year will be around 560 000 days.

The SANDF have started a HIV/AIDS project to assist its members who are HIV-positive (Sunday Independent 2004:2).

2004, August - US spent R470m on Aids in SA. The United States government has spent R470m on Aids programmes in South Africa in the past five months. The US embassy said 10 000 South Africans were placed in treatment programmes during this period, while 3 600 were receiving antiretrovirals.

It is important to note that there are daily changes with regard to figures, statistics, the political landscape and news relating to HIV/AIDS. The researcher, although aware of these changes, could not incorporate all this information in this study due to the availability of information coupled with time constraints linked to the nature of the study.

After this historical overview the researcher will now describe what HIV and AIDS is. Although traditionally one would describe the phenomenon at the start of a chapter the researcher deemed it important to first understand the origin before the description because there is still a lot of confusion linked to HIV and AIDS and their relationship with each other. The confusion and subsequent problems to separate and define HIV and AIDS were illustrated partly by understanding where it all started.

2.3 DEFINING HIV/AIDS

AIDS is caused by the Human Immunodeficiency Virus (HIV). AIDS is the acronym for Acquired Immune Deficiency Syndrome and the disease is described by Van Dyk (2001:4) as acquired because it is not a disease that is inherited. Infection occurs through the exchange of infected body fluids. The human immunodeficiency virus or HIV enters the body from outside and once in the bloodstream the HIV-virus can replicate itself and eventually destroy the cells. Deficiency refers to the fact that the body's immune system has been weakened so that it can no longer defend itself against passing infections. With the destruction of the immune system cells the body becomes increasingly unable to resist other infections, opening the opportunity for opportunistic infections. A syndrome is a medical term, which refers to a set or collection of specific signs and symptoms that occur together and that are characteristic of a particular pathological condition.

AIDS is thus not a specific sickness, it will be better to describe it as a group or combination of many different symptoms or conditions that exist within the affected body as a result of the HIV virus weakening the body's immune system. Van Dyk (2001:5) defines AIDS as a syndrome of opportunistic diseases, infections and certain cancers –

each or all of which has the ability to kill the infected person in the final stages of the disease.

The viewpoint from most scientists and virologists is that AIDS is caused by HIV (Barnett and Whiteside 2002:71-73). There has recently been a debate raging in South Africa as to whether or not HIV causes AIDS. This has seen the South African government confusing and stalling treatment and preventative programs rather than applying political will and power to address the problem. Pressure from lobby groups such as the Treatment Action Campaign who took the government to court facilitated a change in government policy. Government was forced to roll-out treatment in all major health centres. Now the ANC led government has developed a national HIV/AIDS plan. The challenge now is to get employers and other stakeholders to form a partnership with government to address the issue of HIV/AIDS in the workplace as well.

It does need to be mentioned that the initial denial from government could have stemmed from the fact that there have been a small number of cases where AIDS occur without HIV, and in an equally small number of cases some HIV-positive individuals did not develop AIDS but these are clearly the exception rather than the rule (Whiteside and Sunter 2001: 40).

As indicated earlier, HIV is believed to be a virus that has crossed the barrier from the animal (primates) species to the humans. The HI virus has a circular shape and it consists of an inner matrix of protein called the core where the generic (viral RNA) is housed. An outer layer of protein surrounds the core with numerous small glycoprotein projections on its surface. Van Dyk (2001:7) indicates that the HI virus, like other viruses can only reproduce itself inside a living cell which it parasitises for purposes of reproduction. The question however remains why HIV is so different and so lethal compared to other viruses.

The HI virus does something that no other virus known to mankind has ever done: it directly searches for, attacks and hijacks the most important defensive cells of the human

immune system, the CD4 or the T-cells. It thus systematically destroys healthy CD4 cells eventually rendering the body unable to defend itself against attacks from exterior pathogens (Van Dyk, 2001:7).

Curlee (in Ross 2001:21) supports this view and says that people who are HIV positive are also more susceptible to opportunistic infections and diseases such as pneumonia, wasting syndrome, Kaposi's sarcoma, pulmonary tuberculosis and herpes simplex. These deficits can translate into possible feeding or swallowing problems, articulation disorders, dysarthria and inadequate respiratory support for speech. There is also the problem of hearing pathologies including hearing loss related to ototoxic medication used to treat the immunocompromised individual. To further understand the impact of HIV/AIDS we need to understand the HIV/AIDS life-cycle. Van Aardt (2002: xiv) indicates that HIV-positive people in South Africa can be grouped into six categories with respect to how advanced they are in the HIV/AIDS life-cycle, namely:

- Acute HIV syndrome: This syndrome occurs about one to four weeks after HIV infection and lasts for about two weeks. By 2001, about 5,9 % of HIV-positive people were in this phase of the HIV/AIDS life-cycle.
- Silent phase: During this period, which may last between five and twelve years (or even longer), the HIV-positive person is not clinically aware of being infected with HIV. By 2001, about 35,3% of HIV-positive people were in this phase of the epidemic. As the bulk of HIV-positive move out of this phase towards full-blown AIDS, the percentage of people in this phase of the epidemic is expected to decline to 20.9% by 2008.
- The progressive generalised lymphadenopathy (PGL) phase: During this phase HIV-positive people become aware of swollen lymph glands. About 30,9 % of HIV-positive people were estimated to be in this phase by 2002 while about 23,4% will be in this phase by 2008.
- The AIDS-related complex (ARC) phase: This phase is a composite of a wide variety of symptoms and signs that precede full-blown AIDS. By 2002 about

16,4 % of HIV-positive people were in this phase, increasing to about 18,5 % by 2008

- The full-blown AIDS phase: This phase is characterised by major symptoms that are life threatening. During this stage the HIV symptoms become far more acute while the frequency of opportunistic diseases increases. By 2002 about 10,8 % of HIV-positive people were in this phase of the disease, increasing to about 17,2% by 2008.
- The terminal phase: This is the final phase of the HIV/AIDS life-cycle, during which an HIV-positive person wastes away and eventually dies because of AIDS-related diseases. By 2002 about 7,2 % of HIV-positive people were in this phase, increasing to about 12,6 % by 2008.

With this background and understanding of HIV/AIDS the researcher will now focus on the socio-economic sphere, with special reference to the working environment.

2.4. SOCIO ECONOMIC IMPLICATIONS FOR EMPLOYERS

HIV/AIDS already has dire demographic, social, economic and developmental implications for various sub-Saharan countries. In South Africa the toll of the HIV/AIDS epidemic continues to mount as is evident from increasing numbers of HIV-positive people and the rapid increase in the number of AIDS-related deaths. It is estimated that between 2010 to 2015 there will be 17 times more deaths in the age group 15 to 34 years than there would have been in the absence of HIV/AIDS (Van Aardt, 2002: xiii). The effect of HIV/AIDS will have negative implications for employers on both the macro and micro level.

2.4.1 Macro level

According to Parker, Kistner, Gelb, Kelly and O'Donovan (2000: 30) literature documenting research on the impact of HIV/AIDS on South African firms is scarce and uneven. Within the available literature the authors list the following economic impact factors:

- AIDS-related illnesses and deaths of employees affect a firm by both increasing expenditures and reducing revenue.
- Expenditures are increased for health care costs, burial fees, and training and recruitment of replacement employees.
- Revenues may be decreased because absenteeism due to illness or attendance at funerals and time spent on training. This is the case not only for the individual person with HIV/AIDS, but also for others who will give up their labour time to care for persons with HIV/AIDS.
- Labour turnover can lead to a smaller and/or less experienced workforce that is less productive.
- Increased labour turnover will lead to loss of skills, loss of tacit knowledge, and declining morale.
- Labour replacements and other direct and indirect costs will result in higher production costs.
- An increased demand for benefits would add 15% to remuneration cost of an average manufacturing company by 2005.
- Benefit packages will have to include adequate insurance cover, retirement funds, health and safety provisions, medical assistance, testing and counselling, and funeral costs.
- All of these factors would result in the reduction of operating profits for firms.
- Enterprises would be likely to invest in more capital-intensive technology/ production.

Prof. Carel van Aardt of the Bereau of Market Research (BMR) of the University of South Africa (Unisa) indicated that the toll of the HIV/AIDS epidemic in South Africa continues to mount. He indicated that AIDS-related deaths among the adult population increased from about 9 % of adult deaths in 1995/1996 to about 40 % of adult deaths in 2000/2001 (www.petech.ac.za/aids/2003HIV007).

Parker *et al* (2000:31) indicated that a study examining several firms in Botswana and Kenya documented that the most significant factors in increasing labour costs were

absenteeism due to HIV/AIDS, followed by increased burial costs. By contrast, a study in Zimbabwe found that the major expense was health care costs. The above mentioned authors refer to a study done in South Africa that examined the expected impact of AIDS on employee benefits, and thus on corporate profits. It found that at current levels of benefits per employee, the total cost of benefits would rise from 7% of salaries in 1995 to 19% by 2005. Since these additional costs will have to be paid at the same time that productivity is declining due to HIV/AIDS, the net impact on profits is significant.

Fesko (2001:235) highlights the impact on productivity and indicates that it is critical for HIV positive individuals, who experience improved health to return to work or maintain their current employment. Greenwald, (in Fesco 2001:235) indicates, however, that many HIV positive employees will have to adjust their work demands to accommodate their health status (this can include reduction in working schedule, time off for medical appointments, or reduction in physically demanding work).

South Africa has one of the highest per capita HIV prevalence rates in the world with an estimated 2000 new cases daily. Already more than five million South Africans have contracted HIV and according to the World Health Organisation (WHO) six to ten million South Africans could die of AIDS in the next 10-15 years. It is estimated that over the next 10 years, many South African companies will begin to lose approximately 4% of their employees every year. But the authors indicated that, contrary to what one will expect, companies were not considering HIV/AIDS as an important business issue. The employers considered restructuring, economic uncertainty and new labour legislation as overriding concerns. Whiteside and Sunter (2001:104) also noted that it must be remembered that for some businesses, HIV/AIDS represent an opportunity. These will include health care, burial industry and AIDS NGO activities or organisations. Life expectancies at birth will also decline significantly because of HIV and AIDS.

Available statistics reveal that HIV/AIDS has already had a significant impact on the life expectancies of South Africans. The average life expectancy of South Africans declined from about 63 in 1996 to about 55 years in 1999. In a resent report it was indicated that

the life expectancy of South Africans at birth was, in the period 1970 – 1975, 53,7 years; now (estimate for the period 2000-05) it is 47,7 years(Campbell, 2003:12). The fact is time is relative; Barnett and Whiteside (2002:19) highlighted this when they considered the real implications of differing life expectancies. A young adult female aged 20 in a country where life expectancy is only 40 has only 20 more years to look forward to, 20 years in which to fulfil herself. In contrast you might have a 20 year old in a society where life expectancy is 75 years. This individual has time to play, learn, experiment and grow old. Life expectancy thus impact on people with real expectations and different expectations affects the choices people make and the directions they take for their futures.

In the South African context Van Zyl (1999:11) predicted life expectancy to decline to below 45 years by 2008. This will not only affect people's orientation and decisions within the country but could also influence other countries world-wide to think twice before investing in South-Africa. It is also predicted, that every economically active South African will pay for the consequences of the country's large incidence of HIV infections tax-wise, or through higher medical and life assurance premiums. As professor Ruben Sher, Director of the National AIDS Training and Outreach Programme explains: " We can't even visualise what it will cost South Africa's economy in the future, notably from 2005, when millions of HIV-positive cases develop into full-blown AIDS".

He also stressed the fact that organisations should be filled with trepidation, knowing this will have a huge effect on South Africa's Gross Domestic Product (GDP). South Africa's economically active workforce is fast becoming HIV-positive: "We're talking about a loss of unskilled and skilled workers, as well as training costs, much lower productivity and higher cost of health care and pension pay-outs in the event of death". Productivity will be affected through disease and funeral attendance, together with a higher incident of accidents and even discrimination and tension within the workplace (Van Zyl, 1999:11).

Whiteside and Sunter (2001:85-86) suggests that there are two mechanisms through which the epidemic may affect economies and they are:

- The illness and death of productive people and the consequent fall in productivity.
- The diversion of resources from savings (and eventually investment) to care. This will happen as people spend their savings on medication and special food and as the disease progresses people will begin cashing in insurance policies and selling capital items. In rural areas, the sale of cattle and farming equipment is already known to occur.

The authors continue and argue that it is a harsh economic reality that not all lives have equal value. This means that the degree to which these factors will impact on national growth will depend on the people who are infected in terms of their importance to national production, and to what extent money is diverted from savings to care. If the majority of those who are infected are unemployed, subsistence farmers or unskilled workers, then the impact on the national economy will not be as great as if they are skilled and highly productive members of society.

Anon (2000:11) indicates that another important factor that will have a negative impact on the economy, is the ever diminishing buying power of consumers. When people have less money to spend, or when six million people are suddenly no longer there, it will seriously affect the economic growth of South Africa.

2.4.2 Micro level

Besides the effect on the economy, HIV/AIDS will also seriously affect the micro- or household level of the country. HIV/AIDS will affect the average family's disposable income by 10-15 % because of increased medical fund and related contributions, and this figure will drastically rise as the impact of HIV/AIDS epidemic is felt everywhere. Thus households are then caught in a double bind of needing more resources, at the very time when these may be reduced. Barnett and Whiteside (2002:189) indicate that it is not only income levels that drop but household spending that changes. A household experiencing an adult death spent less during the person's illness on food items and spent a greater percentage on medical care. They also spent 33% less on non-food items such as

clothing, batteries and soap. The impact on households is even clearer if we link it to the huge problem of poverty in South Africa.

The links between poverty and health are increasingly recognised and understood. It is clear that AIDS is not simply a disease of poverty, although poverty undoubtedly helps drive the epidemic. It is also clear that AIDS increases poverty. At present in South Africa the poorest 40 per cent of households receive only 11 per cent of total income, while the rich 10 per cent receive 40 per cent. For poorer households an AIDS case will decrease income and increase the demands on existing sparse resources which mean that AIDS may also increase inequality. Richer households will purchase assets from AIDS-stricken poorer households (who need to sell as part of a survival strategy) and the long-term impact may be to accentuate existing inequalities (Sunter and Whiteside 2001:89).

As indicated before AIDS is a reality and will eventually kill at least 25-35 per cent of the economically active and productive members of our population. Of particular concern is the level of orphaning. According to Sunter and Whiteside (2001:96) nearly one million South African children under the age of 15 will have lost their mothers to AIDS by 2005. This is estimated to increase to around two million by 2010. AIDS will therefore over time cause a major diminution in social capital in the form of lack of social skills, knowledge and unclear expectations brought about by the psychological impact of witnessing one or both parents dying of AIDS. Most will grow up without adequate parental supervision, guidance, and discipline under impoverished conditions – an environment that will increase their temptation to engage in criminal activity at an early age. This in turn could add to the cost to companies and taxpayers in protecting themselves and in rehabilitation processes, juvenile justice processes and crime prevention measures.

In terms then of the socio-economic factors, the vulnerability of the business sector will depend on factors such as the type of production process, risk profiles of employees, the skill factor of employees infected as well as employee benefit structures, such as medical aid and pension schemes. Representative data on the magnitude of cost to South African

organisations are almost non-existent. Available data indicates that, for most organisations, irrelevant of size, the costs of HIV/AIDS among employees are unlikely to be devastating for any one particular year. Over time, however, cost will be substantial, and in some businesses, illness or death of entrepreneurs or even key employees, may prove disastrous (Kinghorn 2000: 22).

2.5 LABOUR AND LEGAL IMPLICATIONS FOR EMPLOYERS

Legislation in South Africa that addresses the issue of HIV/AIDS centres around promoting a safe working environment, and focussing on non-discrimination and confidentiality.

2.5.1 The Constitution and the Bill of Rights

The South African Constitution (Act No. 108 of 1996) is the supreme law of the country and all other laws must comply with its provisions. The Bill of Rights (which is part of the Constitution) enunciates a number of basic human rights which apply to all citizens and which therefore also protect people living with HIV/AIDS. According to the Constitution, these rights include the following:

- The right not to be unfairly discriminated against, either by the state or by another person. Although HIV and AIDS are not listed grounds in the equity clause of the employment equity Act, in the case of Hoffman v South African Airways the Constitutional Court found that discrimination on the basis of HIV status was unfair discrimination in terms of the equity clause (Grogan 2001: 249).
- The right to bodily and psychological integrity, which includes the right to security and control over the body.
- The right not to be subjected to medical or scientific experiments without the person's own informed consent.
- The right of access to health care services, including reproductive health care
- The right not to be refused emergency medical treatment.
- The right to information and basic education.

- The right to privacy.
- The right not to have the privacy of one's communications infringed.

2.5.2 The basic rights of people living with HIV/AIDS

Essentially people living with HIV and/or AIDS should have the same basic rights and responsibilities as those which apply to all citizens of the country and these include the following:

2.5.2.1 Confidentiality and privacy

No person may disclose to any other party, the HIV status of a person without that person's fully informed consent. In the event of the death of such a person, the status of the deceased person may not be disclosed to anybody without the consent of his or her family or partner – except when required by law.

In the workplace this means that should the company have health care professionals providing services to the organisation they will only be able to disclose a patient's HIV status to other health care professionals or to any person within the organization with the patient's explicit informed consent.

Grogan (2001:249) indicates that the majority of individuals did not tell their employer or co-worker that they were HIV positive. He describes disclosure as a double-edged sword, because it creates opportunities for medical and social support, but it may lead to extra stress as a result of stigmatisation, discrimination and disruption of personal relationships.

Van Dyk (2001:409) emphasises that should a counsellor or any other health care professional disclose a client's HIV-positive status to anybody (even including that person's sex partner) he or she must be prepared to accept full responsibility for the decision, as well as the possible legal consequences.

2.5.2.2 Health and support services, public benefits, medical schemes and insurance

Public measures should be adopted to protect people with HIV or AIDS from discrimination in employment, but also in the public sphere including; housing, education, child care and custody and the provision of medical, social and welfare services. Medical schemes (Subject to the Medical Schemes Act No 131 of 1998) and insurance companies may not discriminate unfairly or refuse to provide services solely on the basis of HIV/AIDS status (Van Dyk 2000:410).

2.5.2.3 Education on HIV and AIDS

The principle here is that all people have the right to full access to information about HIV and AIDS and especially about prevention methods. The Code of Good Practice specifically indicates that employers should educate employees with the aim, of amongst other things, to eliminate discrimination against people with HIV or AIDS.

2.5.2.4 Duties of people with HIV or AIDS

All people have the right to insist that they or their sexual partners take appropriate precautionary measures to prevent the transmission of HIV. Van Dyk (2001) argues that people have a moral obligation to tell their sex partners if they are HIV-positive. Thus people with HIV or AIDS have the duty to respect the rights, health and physical integrity of others, and to take appropriate steps to ensure this when necessary (Van Dyk 2001:411).

2.6 CODE OF GOOD PRACTICE: KEY ASPECTS OF HIV/AIDS AND EMPLOYMENT.

The Code of Good Practice (hereafter referred to as The Code) was issued as Appendix 4 to the Labour Relations Act, 1995 and the Employment Equity Act, 1998 in December 2000. It is stated that The Code should be read in conjunction with the Constitution of South Africa Act, No 108 of 1996 and all relevant Legislation as described above.

The Code has been developed because of the recognition that HIV and AIDS are serious public health problems with socio economic, employment and human rights implications. The Minster of Labour MMS Mdladlana 1998 indicated that it is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production cost and workplace morale (Government Gazette 21815:2).

The Code has been developed as a guide to employers, trade unions and employees to assist in managing the impact of HIV/AIDS in the workplace through the implementation of an HIV/AIDS policy and programme. Furthermore The Code seeks to assist with the attainment of broader goals namely:

- eliminating unfair discrimination in the workplace based on HIV status
- promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
- promoting appropriate and effective ways to manage HIV in the workplace;
- creating a balance between rights and responsibilities of all parties; and
- giving effect to the regional obligations of the Republic as a member of the Southern African Development Community (Government Gazette 21815:3).

The Gazette (Government Gazette 21815) further sets out the following objectives;

The Code's primary objective is to set out guidelines for employers and trade unions to ensure that individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:

- creating a non-discriminatory work environment;
- dealing with HIV testing, confidentiality and disclosure;
- providing equitable employee benefits;

- dealing with dismissals; and
- managing grievance procedures.

The Code's secondary objective is to provide guidelines for employers, employees and trade unions on how to manage HIV/AIDS in the workplace. The Gazette states that since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed above, on the following:

- creating a safe working environment for all employers and employees;
- developing procedures to manage occupational incidents and claims for compensation;
- introducing measures to prevent the spread of HIV;
- developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
- supporting those individuals who are infected or affected by HIV/AIDS so they may continue to work productively for as long as possible.

The Code also encourages employees to undergo voluntary testing. When and how people, especially employees, may be tested for HIV has been a thorny issue within the workplace and will now be discussed in more detail.

2.7 HIV TESTING

An HIV test is generally a blood test, which is screened for HIV anti-bodies. In general no person may be tested for HIV infection without his or her free and informed consent except in the case of anonymous epidemiological screening programmes undertaken by authorised agencies such as the national, provincial or local authorities. In all other cases including blood donations – the person's informed consent is legally required (Van Dyk 2001:244).

Within the workplace the following legal framework should apply to all employers:

- Constitution of the Republic of South Africa (Act No. 108 of 1996)

As mentioned before the Constitution provides that every person has the right to privacy and bodily integrity. In this regard it would mean that no employee (no person) may be tested (including HIV testing) or treated without informed consent and their right to privacy should be upheld and respected.

- Employment Equity Act, No. 55 of 1998

The Employment Equity Act prohibits companies to have employees tested for HIV without authorisation by the Labour Court. Before a recent landmark case (Irvin & Johnson LTD v Trawler & Line Fishing Union & Others) this meant that employers are required to apply to the Labour Court for a Court Order granting permission to test for HIV before requiring employees to submit to any such test.

Section 7(2) of the Act states:

"Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined justifiable by the Labour Court in terms of section 50(4)."

Section 50(4) provides the Court with the power to impose conditions on authorised HIV testing. It states that the Labour Court declares that the medical testing of employees as contemplated in section 7 is justifiable, the Court may make any order that it considers appropriate in the circumstances, including imposing conditions relating to:

- The provision of counselling
- The maintenance of confidentiality

- The period during which the authorisation for any testing applies; and
- The category or categories of jobs or employees in respect of which the authorisation for testing applies."

In the Joy Mining v NUMSA (2002) case the following criteria were spelled out for applications to the Labour Court in determining whether HIV testing is justifiable:

- The prohibition on unfair discrimination
- The need for the HIV testing
- The purpose of the test
- The medical facts
- Employment conditions
- Social policy
- Fair distribution of employee benefits
- Inherent requirements of the job
- Categories of employees concerned

The Court will also take note of the following factors even though they do not relate directly to the justifiability inquiry:

- Attitude of employees
- Whether the test will be voluntary or compulsory
- Financing of the test
- Employee preparedness for the testing
- Pre-test counselling
- Nature of the proposed test and procedure
- Post-test counselling

The Code indicates circumstances where an employer must approach the Labour Court for authorisation if the employer wishes to undertake HIV testing of employees;

- During an application for employment
- As a condition of employment
- During procedures related to termination of employment
- As an eligibility requirement for training and staff development programmes
- As an access requirement to obtain employee benefits

In the Irvin & Johnson LTD v Trawler & Line Fishing Union & Others (2003) 24 ILJ 565 (LC) The Court considered the distinction between compulsory testing and voluntary testing and noted the following:

" Compulsory testing, in this context, means the imposition by the employer of a requirement that employees or prospective employees submit to testing on the pain of some or other sanction or disadvantage if they refuse consent. This is contrasted with voluntary testing where it is entirely up to the employee to decide whether he or she wishes to be tested and where no disadvantage is attached to a decision by the employee not to submit to testing.

The court found that section 7 in the Employment Equity Act, as a whole applies to compulsory testing and does not apply to voluntary testing. Provided testing is truly voluntary, it does not matter whether the initiative comes from the employer or the employee. Support for this view is found in clause 7 of The Code.

The court accordingly concluded that the anonymous and voluntary testing which the company wished to arrange for its employees did not fall within the ambit of s 7 (2) and that the company did not require the authority of the Labour Court before allowing its employees to be tested.

All HIV testing, whether it be "authorised" or "permissible", should take place:

- Within a health care worker and employee-patient relationship
- With informed consent and pre-and post-test counselling; and

- With strict procedures relating to confidentiality
- And in accordance with the Department of Health's National Policy on testing for HIV

2.8. MANAGING HIV/AIDS IN THE WORKPLACE

Grogan (2001: 248) indicates that (other than the EEA and LRA) the following act will also play a role in the effective management of HIV/AIDS in the workplace:

- The Occupational Health and Safety Act No 85 of 1993 (OHSA) as far as this acts requires employers as far as it is reasonable and practical to create a safe working environment. This will include universally accepted infection control procedures where there might be a possible exposure to blood or blood products.

- Mines Health and Safety Act No 29 of 1996 as far as the act requires of mine owners to create a safe working environment. The mine manager is tasked with identifying health and safety risks, ensuring that employees are not exposed to these risks and to supply safety equipment and training

- Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as far as the act provides compensation for employees who are injured in the course and scope of their employment, provided that such an injury causes disablement or death.

- Basic Condition of Employment Act No. 75 of 1997 sets out minimum employment standards and spells out sick leave entitlements (Six weeks paid sick leave within every sick leave cycle).

2.8.1 Guidelines for employers

The effective management of HIV/AIDS in the workplace requires an integrated strategy where employers act within the law and that includes, among other, the following elements:

2.8.1.1 Impact assessment

Employers need to develop an understanding and do assessment of the impact of HIV/AIDS on the workplace. The assessment will have to include long- and short-term measures according to the following guidelines (RSA, 2000:12):

- an HIV/AIDS Policy for the workplace
- HIV/AIDS programmes, which would incorporate:

  -ongoing sustained prevention of the spread of HIV among employees and their communities;

  -management of employees with HIV, so that they are able to work productively for as long as possible and;

  - strategies to deal with the direct and indirect cost of HIV/AIDS in the workplace

This assessment could also include classifying activities in terms of the potential risk of exposure to blood and body fluids. Assessing the availability and extent of protective equipment needed for workers who might come in contact with blood and body fluids.

Evaluating standard practices and procedures to ensure compliance with safety measures and to consider redesigning workplaces where and if necessary.

2.8.1.2 Employee Assistance Programme

Many companies are making use of Employee Assistance Programmes (EAP) to effectively deal with employee related issues within the workplace. These programmes

have proved to be a very cost effective tool to prevent and manage problems and improve productivity within the workplace.

EAP include the following areas:

- Initial assessment
- Brief counselling
- HIV/AIDS
- Suicide counselling
- Alcohol and substance abuse
- Trauma counselling (grief, rape, hijacking)
- Anger management
- Referrals to specialized services or rehabilitation clinics
- Training/workshops
- Retrenchments

It is important that these programmes not only focus on the employee infected with HIV but also on the co-workers and the families of the employees. People would need assistance and support because reactions to and feelings of co-workers would be similar to the reactions and feelings described by Ross (2001:21). Employers need to create mechanisms to manage the negative effects that could be caused by these psychological aspects. These feelings and or issues could include:

- Social stigma and isolation as secrecy cut off potential sources of support. (In the workplace the manager might be able to adjust the employees' schedule had he/she known the employee was HIV positive or had AIDS.)
- In the family, fear of contagion may limit intimacy – in the workplace the fear of contagion might limit teamwork and co-operation.
- In both the workplace and the family there might be fear of infecting the person living with HIV with even the common cold or straining his/her lowered immune system.
- Family members or colleagues may also experience feelings of guilt for having estranged and isolated themselves from the person living with HIV/AIDS.

- Prejudice from employers or colleagues where they might also directly or indirectly act with homophobia. They could discriminate against homosexual people because they might fear that they are more likely to have HIV.

The Employee Assistance Programme could play a vital role in managing these psychological problems within the world of work. Employers who do not have an EAP program could organise small support groups or peer counsellors within the workplace. Peer counsellors could then be used to discuss these fears and issues with fellow employees. It will, however, be important to provide counselling and support for the peer counsellors as well, as they will be dealing with emotionally taxing issues. These kinds of programmes and support structures would need to be planned carefully to ensure that they are sustainable.

As previously mentioned, there is a direct link between HIV and AIDS and declining productivity, rising production costs and shrinking profits. Given the nature of the disease, the effects on business will probably be felt over the next l0 years or more. For this reason companies need to develop a long-term commitment and plan for the future.

All companies need to have an HIV and AIDS policy and workplace programme in place as a basic foundation from which to confront this epidemic. A workplace programme should show how a company aims to implement a policy or translate it into concrete actions (Services SETA's: EAP toolkit 2003).

2.8.2 Two examples from the private sector

HIV and AIDS is being seen by corporate South Africa as a critical part of the management agenda. However, it is not a case of one-size-fits-all. Two examples of South Africa's largest corporations have done to develop strategies for confronting HIV and AIDS. With few best known practices to draw on, South Africa is pioneering an approach to the management of HIV and AIDS in business environments (AIDS Management Report, Volume 1 Issue 3, 2003 in Services SETA's: EAP toolkit 2003).

2.8.2.1 BMW

- BMW in 2001 had the highest recorded level of voluntary testing among corporations worldwide. Approximately 71 % of its employees have taken part in VCT (voluntary counselling and testing).
- In December 2001, each employee received a copy of the company's HIV &AIDS policy.
- In that same year, an AIDS coordinator was appointed and a full time doctor employed at the plant in Rosslyn.
- All nursing staff at on-site medical centres were extensively trained in the treatment of sexually transmitted diseases (STIs), the management of TB and in HIV and AIDS counselling, testing and management. They were also trained in family counselling, substance abuse and wellness management.
- The company provides treatment to HIV positive employees.
- Employees who are too ill to work can enrol in an incapacity programme and receive 75% of their salary while they are on the BMW payroll. When they feel better, they can rejoin the workforce.
- The company emphasises holistic wellness e.g. informative and empowering forums on lifestyle issues such as overcoming crises, conflict resolution and coping with abuse.
- BMW trained local doctors in the community to counsel and treat HIV positive people who prefer to be treated by family doctors in their own areas rather than company doctors.
- The company has also established links with and arranged training of traditional healers.
- It is producing a book for its employees giving practical advice on living positively with HIV and AIDS.
- It creates ongoing awareness through poster campaigns and regular articles in the company's newsletter.
- It distributes approximately 30 000 condoms each month through 100 condom machines.

- The company has trained 60 people as peer educators.

2.8.2.2. Daimler Chrysler South Africa (DCSA)

- The company drew up its first formal HIV and Aids policy in 1996. It was signed by management and the National Union of Mineworkers. It is updated every year.
- The company set up a peer education programme from 2000:
  - Peer educators are volunteers
  - Employees select peer educators
  - There is one peer educator on each team on every shift
  - Peer educators are given ongoing education and support
- There is a trained counsellor at the company clinic
- The company promotes and distributes condoms
- Voluntary Counselling and Testing (VCT) is promoted.
- The company works with recognised traditional leaders to support them in their role of education and counselling, and in strengthening referrals between traditional leaders and conventional doctors
- DCSA is part of the AID for AIDS Programme. ARV treatment is available for employees (up to an amount of R20 000 per person per year). They also have access to care, support and treatment as well as wellness programmes.

2.9. SUMMARY

Chapter two provides an overview of the HIV/AIDS pandemic in South Africa with special reference on its impact within the world of work. This includes a historical timeline of HIV/AIDS and recent developments within South Africa concluding with the first human vaccine trials.

HIV and AIDS were also defined and this chapter highlighted the prevalence of HIV within our society. The socio-economic implications were described focussing on both the macro and micro levels. It is clear that HIV and AIDS will have far reaching effects

within our society and that it will have a direct effect within the workplace. The effect of HIV/AIDS varies from increased medical cost and loss of productivity, to more indirect and longer term effects such as loss of morale and morbidity from both the infected and affected employees.

Chapter two also examines the legal implications including the issue of HIV testing within the employment relationship. The Code of Good Practice on Key issues of HIV/AIDS was described and because of the limited nature of this study The Code will be the focus of the empirical research. Chapter two concluded with practical guidelines on how to manage HIV/AIDS in the workplace by looking at two case studies.

It is clear from the above that HIV and AIDS are affecting all employers within South Africa. It is also clear that employers will have to play a more active role in the fight against AIDS if South Africa is to win this battle against this deadly decease.

CHAPTER 3

PRESENTATION AND ANALYSIS OF THE EMPIRICAL FINDINGS ON THE EXTENT TO WHICH EMPLOYERS ARE IMPLEMENTING THE CODE OF GOOD PRACTICE ON HIV AND AIDS.

3.1. INTRODUCTION

The research study examines the extent to which certain employers in South Africa believe that they are implementing the Code of Good Practice as set out in the Labour Relations Act (66 of 1995). Data was gathered in the Gauteng province from different employers. The employers involved in the study were members of and/or were receiving training and consultancy services through the Guardian Employers Organization.

The research procedure focussed on gathering data that would reflect the broad opinion of Gauteng based - employers, as it relates to The Code. A total of 20 employers were selected to complete the questionnaire thereby representing the research sample. The population of this study were all employers to whom services have been rendered by an official of the Guardian Employers Organization within the Gauteng area. The questionnaire was delivered by hand to the employers, and sixteen of the twenty questionnaires were returned. This indicates an 80% response rate. The sample although adequate for the purpose of this study is to small to draw general conclusions.

The researcher indicated in Chapter 1 that an exploratory research design will be used.

Exploratory research has been employed in this study in order to determine the extent to which employers believe they are complying with The Code. The aim of exploratory research is to investigate and explore a particular phenomenon (Grinnell, 1998: 225). Exploratory research is also often used where there is little information on a particular topic (Babbie & Mouton 2001: 78). Although HIV and AIDS are receiving a lot of attention within the media and scientific arena, little is known about the extent to which employers are implementing to Code of Good Practice on HIV and AIDS. Exploratory research was therefore an appropriate design.

The researcher made use of a quantitative approach. The researcher needed very specific information, to determine the degree of effective management of HIV/AIDS in the workplace. A quantitative approach is defined as an inquiry into a social or human problem (De Vos 2002: 79). The researcher chooses this approach because the study aims to numerically evaluate the extent to which employers believe they are implementing the Code of Good Practice.

The researcher also indicated in the research proposal that simple random sampling will be used to get the sample. However, when this was applied it created problems in that certain categories of employers were not included, and that the majority of the employers also represented the same employment sector. Therefore the researcher decided to make use of the following sampling method:

A non-probability purposive sampling method was used. This type of sampling is described by De Vos (2002:207) as a sample that is chosen based on the criteria that are stipulated by the researcher. Twenty employers were chosen as part of the sample based on the following criteria:

- Their working area is within Gauteng province
- That they represent different sizes of employers (small, medium and large)
- That they represent a diversity of employment sectors

The sample, though adequate for the purpose of the study, was too small to draw conclusions or generalisations regarding the general population.

3.2 DATA ANALYSIS

The data for this research study was analysed and categorised according to the relevant responses. All the questions were analysed quantitatively. The data was obtained through self-administered questionnaires. The questionnaire was based on the Code of Good practice on HIV and AIDS to enable the researcher to explore the extent to which employers believe they are complying to this code. The Code is linked to the Employment Equity and Labour Relations Acts and is essentially a standard setting the standard and scope of an appropriate response to HIV/AIDS by employers. The Code is based on principles and legal provisions contained within international law, the Constitution of South Africa, labour legislation and other relevant acts. The Code aims to

firstly provide guidelines, on how to eliminate unfair discrimination based on HIV status, and secondly on managing HIV/AIDS in the workplace.

The questions in the questionnaire focussed on the following aspects:

1. Identifying particulars

1.1 Industry sector

1.2 Number of employees

2. Promoting a non-discriminatory work environment

2.1 Practices and policies

2.2 Measures

3. HIV testing, confidentiality and disclosure.

4. Promoting a safe workplace

5. Employee benefits

6. Dismissal

7. Grievance procedures

8. Managing HIV/AIDS in the workplace

Questionnaire attached as Annexure B.

The following interpretation was based on the answers to the questionnaire:

3.2.1. Identifying particulars of employers who participated in the study

Figure 1: The different industry sectors represented in the study

N = 16

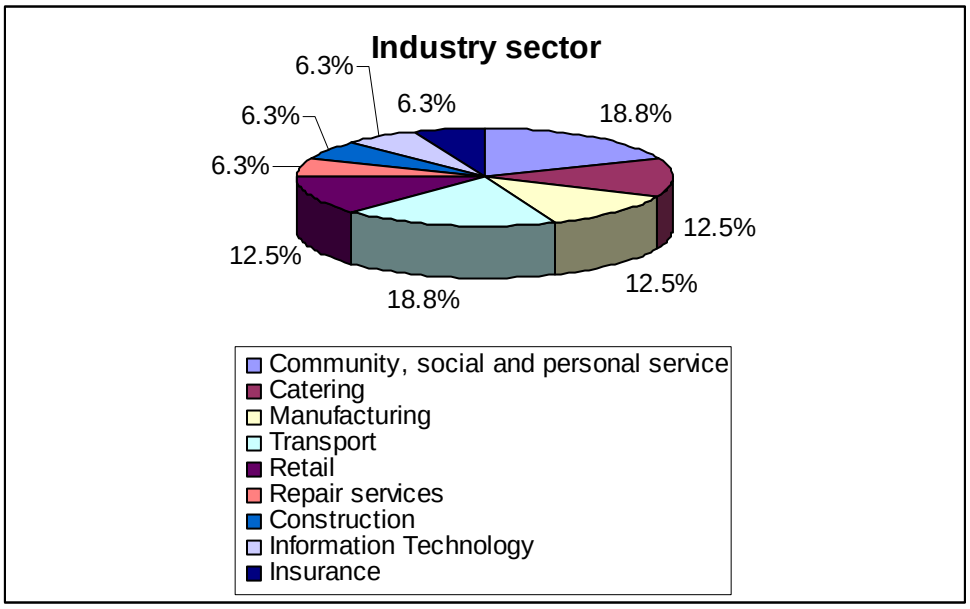


Figure 1 indicates the different industry sectors of the respondents:

The majority of the respondents, being 3 (18.8%) are from the community, social and personal services and 3 (18.8%) from the transport sector respectively. Followed by 2 respondents who are from the manufacturing, catering and retail sectors (12.5%), 1 respondent each (6.3%) from the repair service sector, construction, information technology (IT) and 1 from Insurance. Bearing in mind the limited sample of this study, it still reflected a good representation from different employment sectors.

Figure 2: The different sizes of organisations represented in the study as measured by the number of employees within the organisations. N = 16

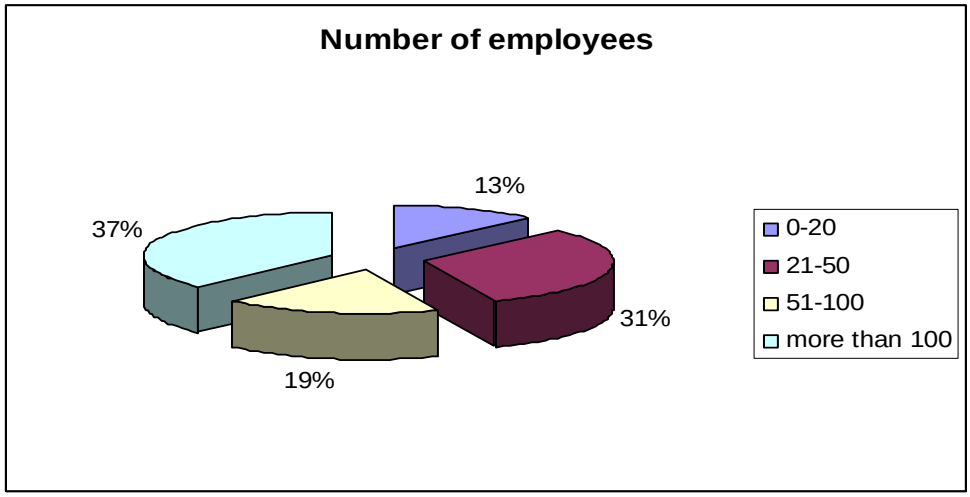


Figure 2 indicates that 6 (37%) of the respondents have more than 100 employees, followed by 5 (31%) who have between 21-50 employees, then 3 (19%) who have between 51-100 employees and lastly 2 (13%) who have less than 20 employees.

Not only did this sample produce a difference in the type of employers but it also had a variety of employer sizes when measured by the number of employees. Though still too small a sample to draw any real conclusions from within the broader society it does reflect a good diversity of employers.

3.2.2. Promoting a non-discriminatory work environment

The following information relates to the extent employers believe they are promoting a non-discriminatory work environment:

Question 2.1

What do you believe is the possibility that you, your managers or supervisors might directly or indirectly discriminate against an employee (or new candidate) who has told the organization that he/she is HIV positive or has AIDS, with specific relation to the following employment practices and or policies?

Figure 3 shows the extent to which employers believe they might directly or indirectly discriminate against an employee as evaluated against the following practices and policies; recruitment, appointments, job classification, remuneration, Employee Assistance Programmes, job assignments, training and development, performance evaluation systems, promotions, transfer and demotions and termination of service.

The scope of this question was possibly too wide, it might have been better to allow employers to respond to each of the categories separately. The researcher was limited by two aspects; firstly, the questions resembled the format of The Code where these categories were grouped together. Secondly, the researcher feared making the questionnaire too long and cumbersome. This might have caused more employers not to respond to the questionnaire.

The fact that 4 (20%) out of 20 questionnaires were not returned may well indicate fear of exposure of underperformance on The Code.

Figure 3: The possible risk of discrimination within the organisations who participated in the study N = 16

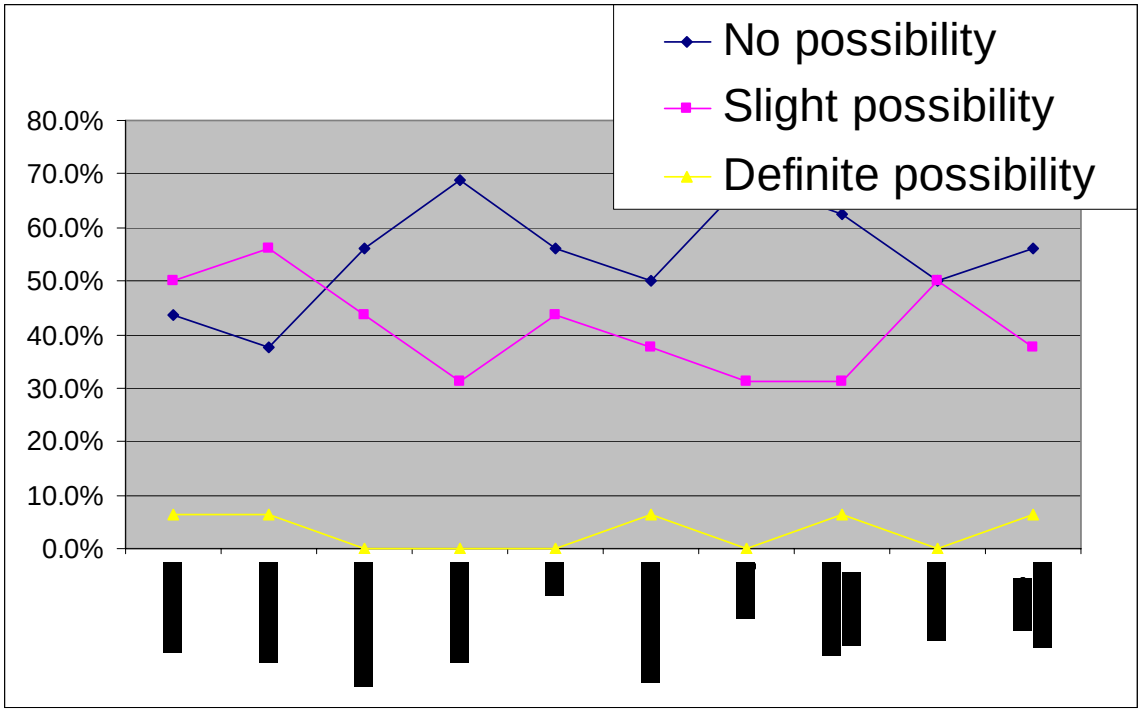


Figure 3 indicates that on average 55% of employers believe that there is no possibility that they can discriminate against employees. The lowest risk regarding discrimination lies with remuneration (68.8%) and training and development (68.8%).

On average 41% of employers believe that there is a slight possibility that they may discriminate against HIV positive employees with regard to the practices and policies as mentioned above. The highest risk in this category lies in appointments (56.3%).

This possible risk seems to be consistent with the literature, Whiteside & Sunter (2001:117) argue that South African Laws governing the manner in which employers

handle HIV and AIDS matters in the workplace is still in its infancy. They indicate that the Employment Equity Act is the only act which expressly mentions HIV and AIDS. It specifically prohibits unfair discrimination against an employee or job applicant on the basis of HIV status. With 56.3% of employers indicating a slight possibility that they believe they might discriminate during appointment of new staff, employers need to pay special attention to their recruitment policies and procedures.

Figure 3 also indicates that on average about 4% of employers believe that there is a definite possibility that they might discriminate against an employee who is HIV positive or who has developed AIDS. The following risk areas exist in this regard; recruitment, appointments, job assignments, performance evaluation systems and the termination of service.

Although 4% is a relatively small percentage, employers need to realize that there are penalties linked to unfair dismissals related to discrimination. For example, the latter could cost the employer paying up to 24 months the employee's salary (and/or enforcement of reinstatement of that employee). An example of this was mentioned in the literature study where the Constitutional Court found that SAA had unfairly discriminated against Hoffmann in rejecting his application for employment on the basis of his HIV status, and that this was a violation of the equity clause (Hoffmann v SAA 2001 (1) SA1 (CC)).

The researcher believes however, that employers might not have been totally honest when it comes to the question of discrimination. Employers might feel the risk to be honest is just too high. Even in an anonymous questionnaire some might still feel that the risk to be completely honest outweighs the reward, as there is nothing for them to gain or lose.

Question 2.2

Indicate how far you believe you have progressed towards promoting a non-discriminatory work environment as it relates to HIV/AIDS, if you evaluate your actions based on the following measures?

- Policies and programmes for the workplace aimed at preventing unfair discrimination and stigmatization of people living with HIV and AIDS.
- Awareness, education and training on the rights of all persons with regard to HIV and AIDS.
- Mechanisms to promote acceptance and openness around HIV/AIDS in the workplace.
- Providing support systems and programmes for all employees infected or affected by HIV and AIDS.
- Developed grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

The HIV/AIDS Technical Assistance Guidelines (2000: 7) defines unfair discrimination as follows:

Drawing a distinction, between individuals or groups, based on their personal characteristics which:

- Imposes burdens, obligations or disadvantages on such individuals or groups which are not imposed on others; or
- Withholds or limit access to opportunities and benefits available to other members of society

Discrimination may be direct when a distinction, exclusion or preference is made on the basis of a direct reference to a person's HIV status. Or it may be indirect where a practice or policy (or the application thereof) impacts more negatively on people living with HIV/AIDS than others. The following figure shows us how far employers believe they have progressed towards creating a non-discriminatory work environment as it relates to HIV/AIDS.

Figure 4: The extent to which employers, who participated in the study, consider their efforts in promotion of non-discriminatory work environment. N = 16

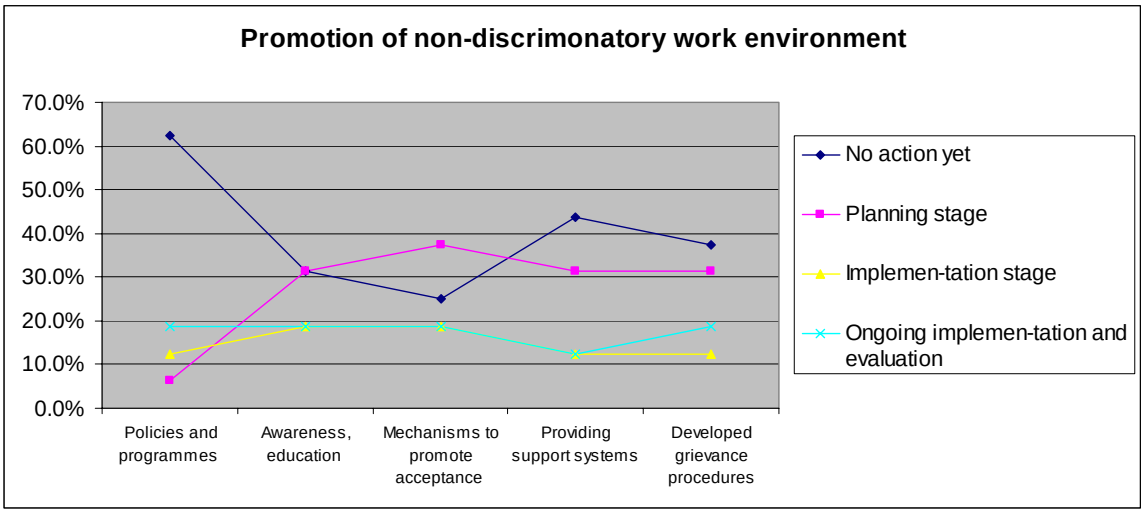


Figure 4 indicates that 10 employers (62.5%) said that they did nothing yet with regard to the development of policies and programmes at preventing unfair discrimination and stigmatization of people living with HIV and AIDS. One employer (6.3%) indicated that they are in the planning stage with regard to these policies and programmes, two employers (12.5%) said that they are currently implementing these policies and programmes and three employers (18.8%) indicated that they are at the stage of ongoing implementation and evaluation.

In question 2.1, only four percent (4%) of employers indicated that there is a definite possibility of discrimination. If this is correlated with the 62.5% of employers who indicated that they have not done anything yet in developing policies or programmes in relation to HIV/AIDS, it would appear as if the risk of discrimination is possibly much higher. Walker et al (2004:110) indicates that dealing with discrimination in the formal legal sense has many limitations. On the one hand it does develop a framework for protection but on the other hand people may still face prejudice and stigma in spite of law. This is why education and training are so important in addressing these issues within the workplace.

Five employers (31.3%) indicated that they have done nothing yet with regard to creating awareness, education and training on the rights of all people with regard to HIV and AIDS. A further five employers (31.3%) indicated that they are in the planning stage, three more employers (18.8%) said they were currently implementing awareness and

education programmes and three (18.8%) said they are at the stage of ongoing implementation and evaluation.

With regard to the third element that relates to mechanisms to promote acceptance and openness around HIV and AIDS in the workplace, four employers (25%) indicated that they have taken no action yet. Six employers (37.5%) said that they are in the planning stage and three said they are currently implementing these mechanisms. Three employers (18.8%) indicated that they are busy with ongoing implementation and evaluations of their mechanisms to promote openness and acceptance around HIV and AIDS in their respective workplaces.

Seven employers (43.8%) indicated that they have done nothing yet with regard to providing support systems and programmes for all employees infected or affected by HIV and AIDS. Five employers (31.3%) indicated that they are planning these systems and programmes and 2 employers (12.5%) said they are implementing these systems and programmes. Two employers (12.5%) indicated that they are currently at the stage of ongoing implementation and evaluation.

In terms of the last element relating to the development of grievance procedures and disciplinary measures to deal with HIV, six employers (37.5%) indicated that they have done nothing yet. Five employers (31.3%) indicated that they are in the planning stage and two employers indicated that they are currently implementing these procedures.

Three employers (18.8%) said that they have these procedures in place and that they are implementing and evaluating them on an ongoing basis.

Again, if this is correlated with question 2.1; only four percent (4%) of employers indicated that they believe that there is a definite possibility of them discriminating against employees. But more than 30 % of employers indicated in this question that they have not done anything yet in the areas of HIV/AIDS education or in developing grievance procedures to enable employees to voice these concerns. It would suggest that more than only 4 % of employers run the risk of definitely discriminating against there employees. In the absence of clear policies and procedures and with no mechanisms in place for employees to lodge their grievances, employers are indirectly creating an environment for discrimination. Walker et al (2004:110) argues that labour legislation is in place to ensure that employers do not discriminate against anyone on the basis of HIV-status. It also seeks to ensure that adequate information on AIDS is available at all places of work, that confidentiality is protected and that employees are protected from victimisation. It is however noted that despite the establishment of a fairly comprehensive policy and legislative framework it needs to be recognised that people in practice could still face abuse. Good policy therefore does not automatically translate into good practice. However where these guidelines are absent might be argued that the risk to discriminate is so much higher.

3.2.3. HIV testing

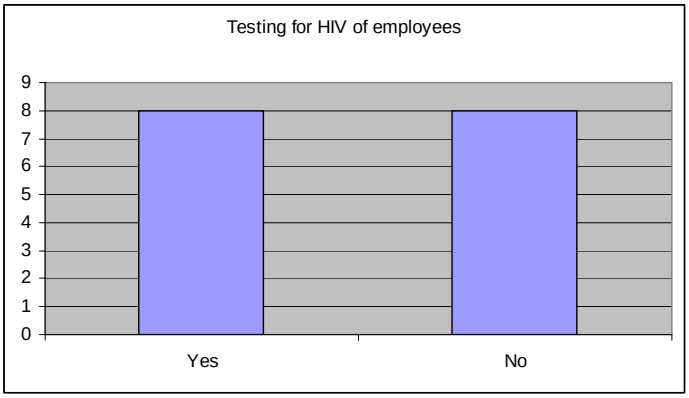
Question 3: HIV-testing, confidentiality and disclosure.

The following aspects relate to the respondents responses on questions on HIV testing, confidentiality and disclosure.

Question 3.1

As an employer do you feel you should have the right to test employees regarding their HIV-status if you believe there might be a risk of transmission?

Figure 5: The extent employers believe they have the right to have their employee tested for HIV N = 16

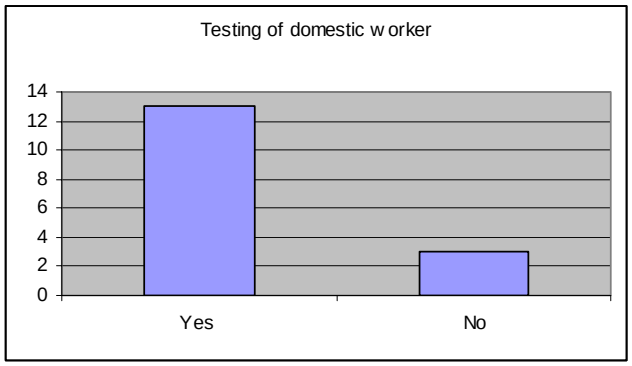


Half of the employers 8 (50%) believed it is the employer's right to test employees when they believe there is a possible risk of transmission.

Question 3.2.

Would you have your domestic worker tested who is employed to care for your infant children?

Figure 6: The extent employers believe they have the right to testing their domestic worker for HIV N=16



This belief or right (to test a worker) seems to grow stronger (see figure 6) when the issue comes closer to home as 13 employers (81.2%) indicated that they will have their domestic worker (thus private employee as oppose to work related employee) tested who is employed to care for their infant child. The researcher deliberately included the question on domestic workers because employers do not always realise that the labour legislation also apply at home (or in the informal sectors).

Question 3.3 -3.5

3.1 Have you ever had any employee tested for HIV?

3.2 Do you believe you need authorization from the Labour Court for compulsory testing of any employee?

3.3 Do you believe you need authorization from the Labour Court when employees are tested anonymously and voluntarily?

Whiteside and Sunter (2001:160) indicated that there was, prior to the landmark I&J case of 2003 (to be discussed later) a range of legal opinions regarding the meaning of section 7(2) of the Employment Equity Act. A *literal* interpretation would imply that all HIV testing within the workplace is prohibited unless Labour Court authorization is obtained. An alternative view is the *nonliteral* - this involves exploring the "intention of parliament" when a law is unclear. Here only testing that unfairly discriminates against an employee is prohibited by the act.

Four employers (25%) indicated that they had an employee or employees tested. Seven employers (43.8%) indicated that they don't believe you need the Labour Court's authorization for such testing and thirteen employers, however, indicated that they don't believe that they need Labour Court authorization when employees are tested anonymously and voluntarily.

It is clear from the responses that employers are not informed as to the legal implications and limitations with regard to HIV testing. The aforementioned responses and apparent confusion as to whether or not an employer needs Labour Court authorisation are highlighted in the literature. In the case; Joy Mining v NUMSA , the Labour Court held that although the issue was not before them for consideration they were concerned as to whether an employee could waive their rights in terms of item 7(2) of the Employment Equity Act as suggested by the " permissible testing" section in The Code. This issue was only clarified in the Irvin & Johnson LTD v Trawler & Line Fishing Union & Others (2003) 24 ILJ 565 where it was determined that employers do not need Labour Court authorisation when employees are tested voluntarily. The court found that item 7 as a

whole applies to compulsory testing and does not apply to voluntary testing. Provided testing is truly voluntary, it does not matter whether the initiative comes from the employer or the employee.

Question 3.6

Do you believe an employer may (according to the Labour Relations Act) compel an employee to be tested for HIV, without Labour Court authorization, in the following circumstances?

- As part of a health care service provided in the workplace
- In the event of an occupational accident carrying a risk of exposure to blood or other body fluids
- For purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

Secondly the question explored whether HIV-testing of employees should always be:

- at the initiative of the employee
- within a health care worker and employee-patient relationship
- with informed consent and pre-and post-test counselling
- with strict procedures relating to confidentiality

The following was indicated from the employer:

Table 1. The extent to which employers believe they need Labour Court authorisation for HIV testing of their employees N=16

		f Yes	f No	% Yes	% No
1)	As part of a health care service provided in the workplace	9	7	56.25	43.75
2)	In the event of an occupational accident carrying a risk of exposure to blood or other body fluids	12	4	75.00	25.00
3)	For purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.	11	5	68.75	31.25
Should the HIV-testing of employees always be:					
-	At the initiative of the employee	9	7	56.25	43.75
-	within a health care worker and employee-patient relationship	13	3	81.25	18.75
-	with informed consent and pre-and post-test counselling	16	0	100	0
-	with strict procedures relating to confidentiality	16	0	100	0

The Code suggests that testing without the Labour Court authorisation is *permissible at the request of an employee*, in the circumstances indicated in the question.

The responses from employers highlight again the confusion that exists within the scope of HIV testing. All HIV testing, whether it be “authorised” or “permissible” should take

place as indicated from the Irvin & Johnson LTD v Trawler & Line Fishing Union & Others case:

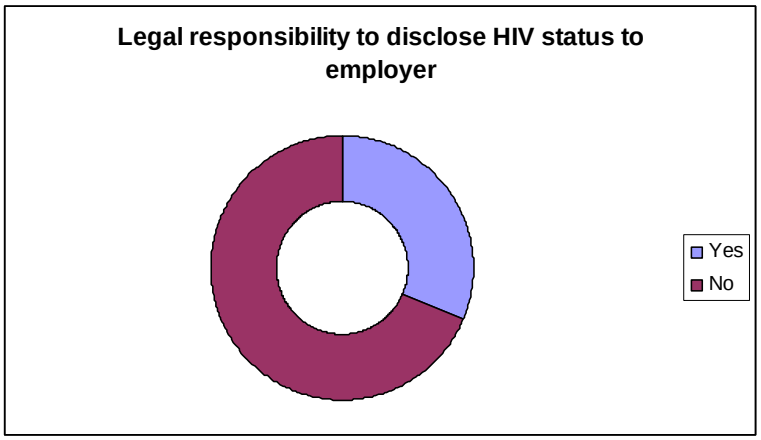
- Within a health care worker and employee-patient relationship
- With informed consent and pre-and post-test counselling; and
- With strict procedures relating to confidentiality
- And in accordance with the Department of Health's National Policy on testing for HIV

A high percentage of employers believed, however, that they may compel an employee to be tested. This would fall outside the scope of voluntary testing.

Question 3.7

Do you believe an employee is legally required to disclose his/ her HIV/AIDS status to the employer?

Figure 7: Whether or not an employee is legally required to disclose his/her HIV status to the employer N=16



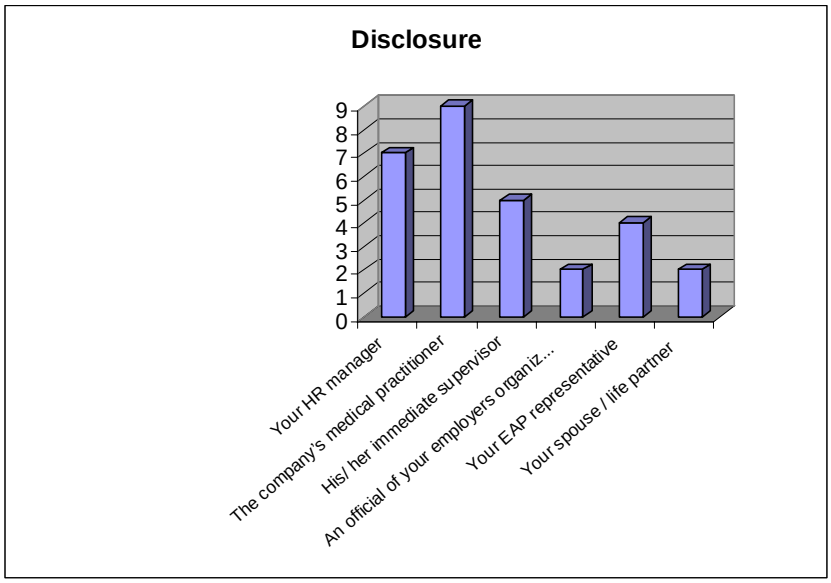
The majority of employers (68.75%) believe that it is the employee's responsibility to disclose their status to the employer. This might be one of the reasons why many employers are not proactively addressing the issue of HIV/AIDS because they are waiting on employees to disclose their status. Employees, on the other hand, will not disclose if they believe that there is a risk of discrimination from the employer.

Question 3.8

If an employee does disclose his/her status to you (personally) indicate, with an (x), to whom you believe you may disclose this information (without having the employee's express written consent to do so)

The following figure indicates the people to whom employers believe they may disclose a person's HIV status to, without having the HIV positive employee's consent to disclose this information.

Figure 8: The number of employers indicating to whom they believe they are allowed to disclose an employee's HIV status. N =16



Nine (56.25 %) employers believed they may disclose this information to the company's medical practitioner, Seven (43.75 %) also indicated that they believe they may disclose this information to the HR manager. Five (31.25 %) employers indicated that they will share this information with the employees' immediate supervisor and a further four (25%) also believed the EAP representative should have access to this information. Two employers (22.50 %) indicated that they believe they can tell the official of their employer organization and two (25.50%) indicated that they believe they could also share this information with their spouse or life partner. In this particular question those who did not respond indicate that they know that you are not to disclose this information to "any of the above".

Confidentiality means that employers must keep personal information about an employee from others unless the employee has consented to the disclosure. According to the HIV/

AIDS Technical Assistance Guideline (2002:15), where an employee does choose to disclose his/her status, (for example to his/her manager or to an occupational health care worker) the information may not be disclosed further without the written consent of the employee. This is consistent with the literature ensuring a person's constitutional right to privacy (Van Dyk 2001: 244).

The implication of, employers or managers as the case may be, disclosing information to a third party regarding the HIV status of an employee could result in a civil claim against the company and or the individual. There might be a vicarious liability on the employer if a manager employed by the company discriminates or discloses an employee's HIV status to a third party.

Question 3.9

Do you believe it is the employer's responsibility to encourage openness, acceptance and support for employees who voluntarily disclose their HIV status within the workplace?

Figure 9. The extent to which employers, who participated in the study, view their responsibility with regard to encouraging openness regarding employee's HIV status within their respective workplaces N=16

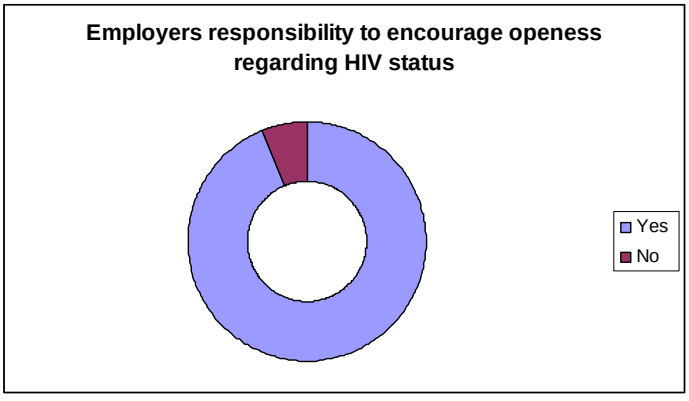


Figure 9 indicates that almost all employers (93.75 %) believe it is their responsibility to encourage openness, acceptance and support for employees who voluntarily disclose their HIV status within the workplace. Looking at this question critically it was possibly a leading question. Employers might almost have felt compelled to answer yes.

Whilst employers can not force employees to disclose their status, they need to create an atmosphere where employees could disclose their status voluntarily. This should be done by ensuring that employees feel secure and guarded from any form of discrimination. One of the advantages of voluntary disclosure lies in the fact that employers will then be in a better position to assist and manage the individual with regard to aspects such as special leave or alternative duties when and if this is necessary.

Question 3.10

If yes, how far do you believe you have progressed towards creating these mechanisms?

Figure 10: The extent to which employers who participated in the study view their efforts in creating a non discriminatory workplace N=16

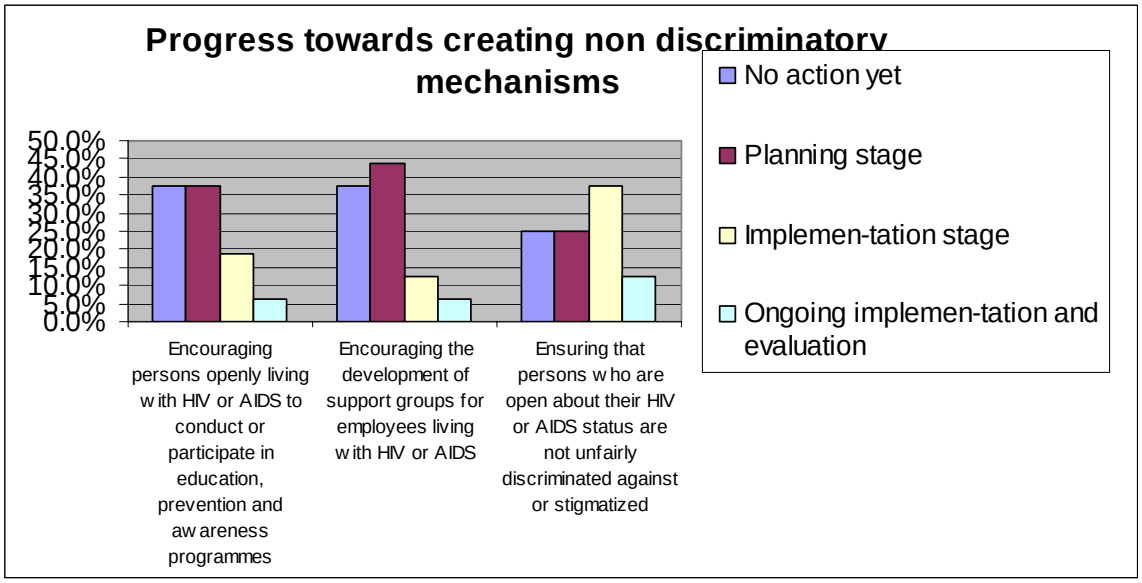


Figure 10 indicates that six employers (37.5%) have shown that they have not done anything yet with regard to creating mechanisms to encourage openness regarding HIV or AIDS. Six (37.5%) employers indicated that they are in the planning stage, three (18.8%) showed that they are currently implementing these mechanisms and one (6,3%) employer indicated that they are at the stage of ongoing implementation and evaluation of these mechanisms.

In similar fashion six employers (37.5%) indicated that they have not started with any action in the development of support groups yet. Seven (43.8%) employers indicated that they are planning the development of support groups for people living with HIV and AIDS. Two employers (12.5%) indicated that they are currently implementing the development of support groups and one (6.3%) employer indicated that they are busy with the ongoing implementation and evaluation of support groups.

When employers responded to their progress relating to the creation of mechanisms to ensure that people with HIV/AIDS will not be discriminated against the results were as follow: Four employers (25%) indicated no action yet, another four employers (25%) indicated that they are planning these mechanisms and 37% of employers (6) said they are implementing mechanisms to ensure non-discrimination against people who are open about their HIV or AIDS status and lastly, 12.5% of employers (2) indicated that they are at the stage of ongoing implementation and evaluation.

Right through the study many employers indicated that they are in the "planning stage". This can be interpreted very broadly. Looking at this category critically it could include a continuum from employers that have talked about this issue once to those who have developed extensive draft policies and programmes combined with elaborative consultative processes involved. It might also have provided some employers with an escape route – a type of a vague commitment to do something about HIV/AIDS.

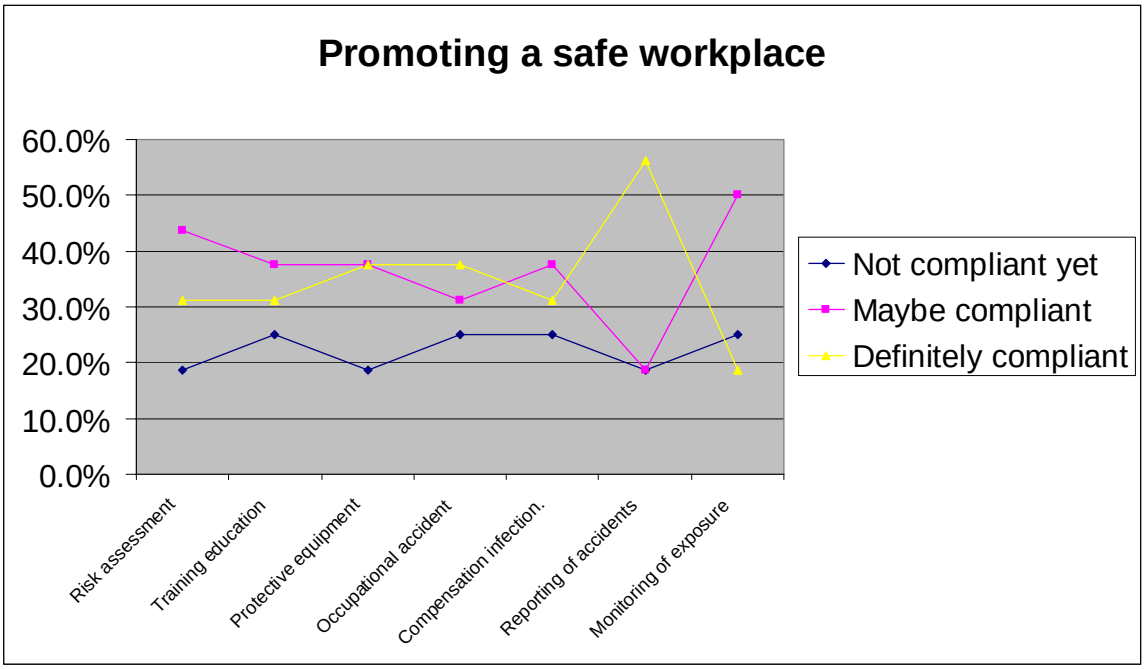
3.2.4 Promoting a safe workplace

Question 4: Promoting as safe workplace

Question 4.1

Should an occupational accident involving body fluids occur, to what extent do you believe you are complying with the Occupational Health and Safety Act as it relates to the following aspects?

Figure 11: The extent to which employers, who participated in the study, believe they are promoting a safe workplace N=16



On average 23.8 % of the respondents indicated that they believe they are not compliant yet when measured against the following aspects

- Risk assessment of occupational transmission within the workplace
- Providing appropriate training, awareness, education on the use of universal control measures
- Providing appropriate equipment and materials to protect employees from the risk of exposure to HIV.
- Developed steps (appropriate management) to be taken following an occupational accident.
- The procedures to be followed in applying for compensation for occupational infection.

- The reporting of all occupational accidents.
- Adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

Thirty nine point one percent (39.1 %) of employers believed they may be compliant and thirty seven point one (37.1 %) indicated that they believe they are definitely compliant.

The employers who indicated that they "may be complaint" could be interpreted as that they are not sure of what the regulations actually say. It could also be interpreted that employers know what the regulations are but that they have not evaluated themselves against these regulations.

The literature referred to the Occupational Health and Safety Act No. 85 of 1993. In managing HIV/AIDS in the workplace it is essential that employers do not discriminate against any employee and that HIV/AIDS is treated as any other universal hazardous biological agent. It is thus the employer's duty to ensure that steps are taken to access the risk of occupational HIV infection (needle prick for example), that this risk is minimised and that appropriate first-aid equipment is readily available to deal with spilt blood and bodily fluids (Whiteside & Sunter, 2001: 162).

3.2.5 Managing HIV/AIDS: Employee benefits and termination of service

Questions 5 and 6

Question 5.1 – 5.5 relates to employee benefits and question 6.1 and 6.2 relates to dismissals

Table 2: Employee benefits

	Frequency Yes	No
Question 5: Employee benefits		
1. Does your organization contribute (partly or fully) toward a pension or provident fund for their employees?	13	3
2. Do you contribute (partly or fully) toward a medical aid scheme?	8	8
3. Should the employer offer employee benefits, do you believe it is the employer's responsibility to ensure that the medical scheme does not unfairly discriminate, directly or indirectly against any person on the basis of his/her HIV status?	14	2
4. Does your organization provide paid sick leave and annual leave to employees? (At least equal to the days provided for in the Basic Conditions of Employment Act)	16	0
5. If an employee is HIV positive or has AIDS do you believe this will negatively affect any of his/her benefits?	4	12
Question 6: Dismissal		
1. Do you believe you may dismiss an employee solely on the basis of his/her HIV/AIDS status?	2	14
2. Where an employee has become too ill to perform their current work, do you and your managers/supervisors know and understand the process of managing employee incapacity and poor performance as set out in Schedule 8 of the Labour Relations Act?	9	7

In the literature mention was made of the Medical Schemes Act No 131 of 1998. This Act regulates Medical Schemes, not employers, but because many employers offer medical cover as a provision in their contracts of employment it will impact directly on their employers. In section 24 (2) (e) the Act provides that medical schemes may not unfairly discriminate, directly or indirectly, against any person on the basis of his/her "state of health". The Minister of Health is also given power to draft regulations stipulating the minimum level of benefits that all schemes must offer to their members.

As indicated in the literature study this could have huge cost implications for companies as their contributions to medical aid could increase dramatically. Fifty percent of the respondents indicated that they contribute towards medical aid for their employees. Twelve employers believed that an employee's HIV status will negatively affect his/her benefits (indicating some form of direct or indirect discrimination).

When employers manage HIV/AIDS, they also need to be aware that the Labour Relations Act No. 66 of 1995 protects employees against arbitrary and unfair dismissals. A dismissal that is solely based on an employee's HIV status is likely to be found to be automatically unfair because it is based on discrimination. However, Whiteside and Sunter (2001:162) indicated that if an employee who has AIDS-defining illnesses is dismissed for incapacity, it could be fair provided that the steps outlined in The Code of Good Practice on Dismissal have been followed.

Question 6.3

To what extent do you believe you and your managers/supervisors are

able to effectively deal with employee incapacity and poor performance?

Figure 12: The extent to which employers believe they are able to effectively deal with incapacity and poor performance.

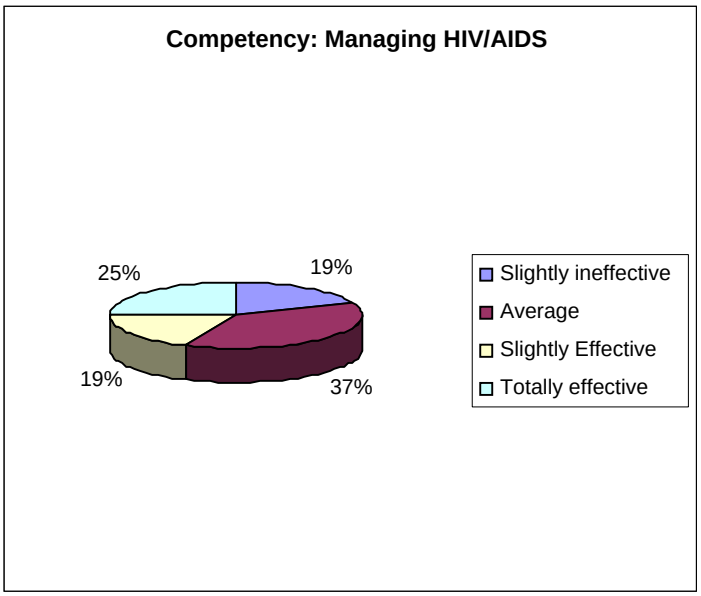


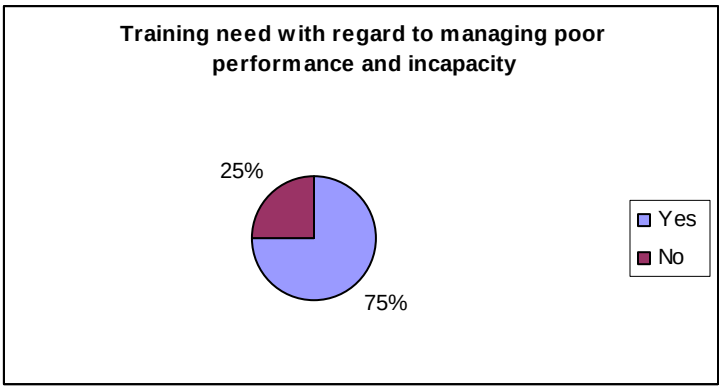
Figure 12 indicates that no employers indicated that they believe that they are totally ineffective, where as three employers (19%) said that they believe that they are slightly ineffective. Six employers (37%) indicated that they believe their competency level is average. Three employers indicated that they believe they are slightly effective where as four employers (25%) believed they can manage incapacity and poor performance totally effectively. The fact that only 25% of employers feel totally confident in their ability to manage these issues could indicate a possible training need.

Question 6.4

Do you believe you and your managers/supervisors might need training

in managing employee incapacity and poor performance?

Figure 13: Whether employers believe they need training in managing poor performance and incapacity. N=16



Twelve respondents (75%) indicated that they need training in this regard; the remaining 25% indicated that they believe they do not need training. This highlights the need for assistance and guidance from employers to help them to manage the industrial relations issues linked to HIV/AIDS more effectively. These figures correlate with the previous question in that only 25% of the employers indicated total confidence in their ability to manage poor performance and incapacity.

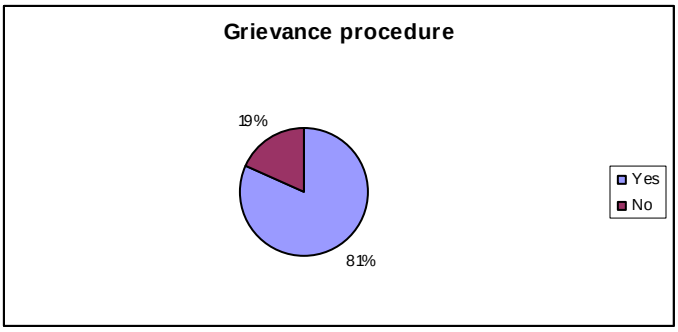
3.2.6 Grievance procedures

Question 7 Grievance procedures

Question 7.1

Do you have a grievance procedure?

Figure 14: Whether or not employers, who participated in the study, have a grievance procedure N=16

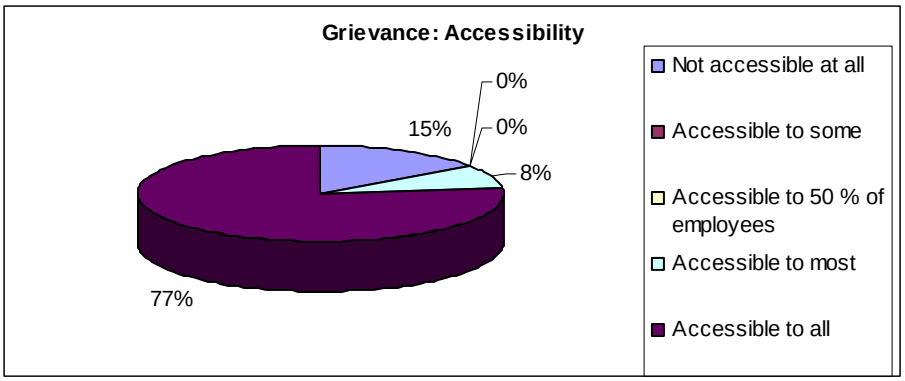


Thirteen respondents (81%) indicated that they do have grievance procedures. Should a company not have a grievance procedure (as is the case in 19 % of the respondents) it becomes more difficult for employees to address their concerns. It also opens the gap for discrimination and victimisation as there are no guidelines to protect the employees who do attempt to raise their issues.

Question 7.2

To what extent do you believe it is accessible to all employees?

Figure 15: The extent to which the grievance procedure is accessible to employees of the organisations who participated in the study N=16

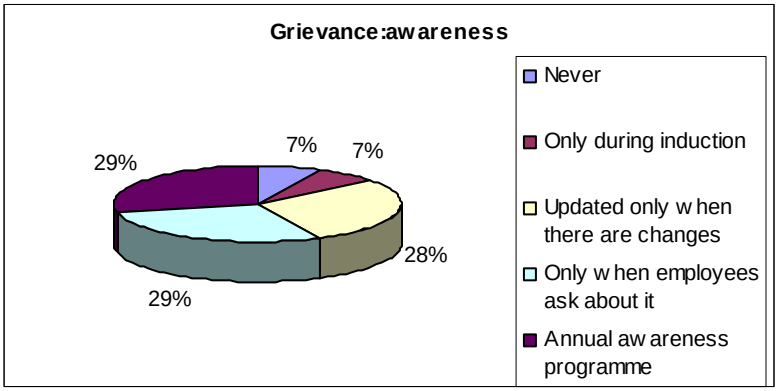


Of those employers who do have grievance procedures, 77% of them (10 respondents) indicated that they believe the procedure is accessible to all. One respondent (8%) indicated it is accessible to most employees and 2 respondents (15%) believed their grievance procedure is not accessible at all. The fact that 15 % indicated that their policies are not accessible at all is shocking. It might be argued that all costs (including management time spend on drafting these documents) were a waste if it does not serve its purpose, namely, allowing employees to access and use it. The researcher realises that the word "accessible" might have been interpreted differently. This would limit the validity of this particular question in that one employer might interpreted it to mean that the policy is in an open plan office somewhere in a file and another could say it meant that the policy is written in all eleven languages. To gain better understanding the researcher would have had to follow this question with and open question to explore the meaning attached to the "accessibility" and the next question's "awareness".

Question 7.3

To what extent do you create awareness and understanding of your grievance procedures?

Figure 16: The extent employers, from the study, are making employees aware of their grievance procedure N=16



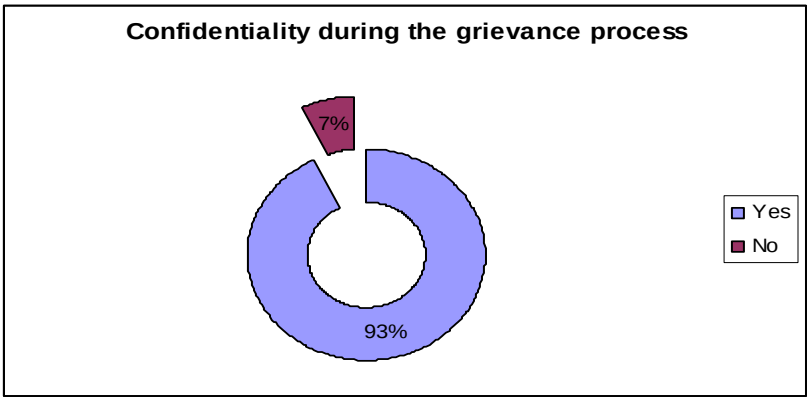
Four respondents (29%) indicated that they create awareness and understanding with employees on an annual basis. Another four (29%) showed that they only do awareness as employees indicate the need for it. One respondent (7%) showed that they create awareness and understanding of their grievance procedure only once during the induction process and, lastly, 1 respondent (7%) indicated that they never did it.

The HIV/AIDS Technical Assistance Guidelines (2002:32) indicate that The Code provides in item 12 that employers should ensure that the rights of employees are protected with regard to HIV/AIDS and the remedies available to them in the event of a breach of such rights becomes integrated into existing grievance procedures. The Code also places the onus on employers to create awareness and understanding of the grievance procedure and to ensure confidentiality within this process.

Question 7.4

Do you have special measures in place to ensure the confidentiality of the complainant during this process?

Figure 17: The extent to which employers, form the study, have measures in place to ensure confidentiality during the grievance process N=16



Thirteen respondents (93%) indicated that they do have special measures in place to ensure confidentiality. Only 1 respondent (7%) indicated that they don't. It would appear that employers understand that there is a risk of disclosing confidential information. There is, however, a conflict between the fact that employers do have these measures in place but if we correlate this with question 3.9, it would appear as if employers might in fact still disclose this information to a third party regardless of the measures they put in place to ensure confidentiality.

3.2.7 Managing HIV/AIDS in the workplace

Question 8: Managing HIV/AIDS in the workplace

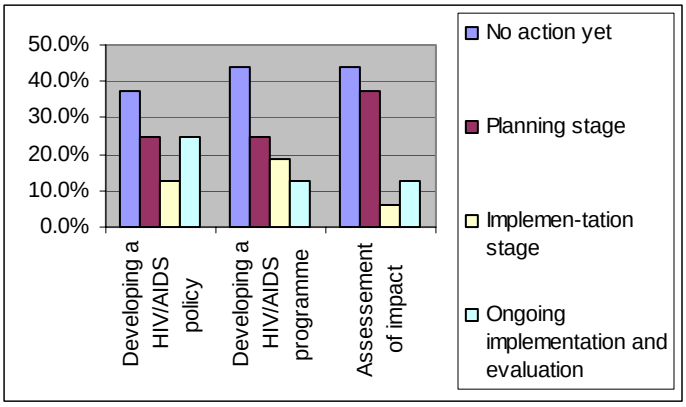
Question 8.1

Evaluate your progress with regard to your strategies/actions towards effectively managing HIV/AIDS in the workplace according to the following measures

- Developing a HIV/AIDS policy.

- Developing a HIV/AIDS programme aimed at prevention, care support and managing the impact of HIV/AIDS.
- Assessing/ researching long and short term impact of HIV/AIDS on the organisation

Figure 18: The extent employers, who participated in the study, believe they are managing HIV/AIDS in the workplace. N=16



On average 41.7 % of all the respondents indicated that they did not do anything yet to manage HIV/AIDS in the workplace as there action relates to the following aspects:

- Developing a HIV/AIDS policy
- Developing a HIV/AIDS programme aimed at prevention, care, support and managing the impact of HIV/AIDS
- Assessed/researched long and short term impact of HIV/AIDS on the organization

Twenty nine point two percent (29.2 %) of the respondents indicated that they are currently planning their actions and twelve point five (12.5%) of the respondents indicated that they are currently implementing their actions to manage HIV/AIDS in the

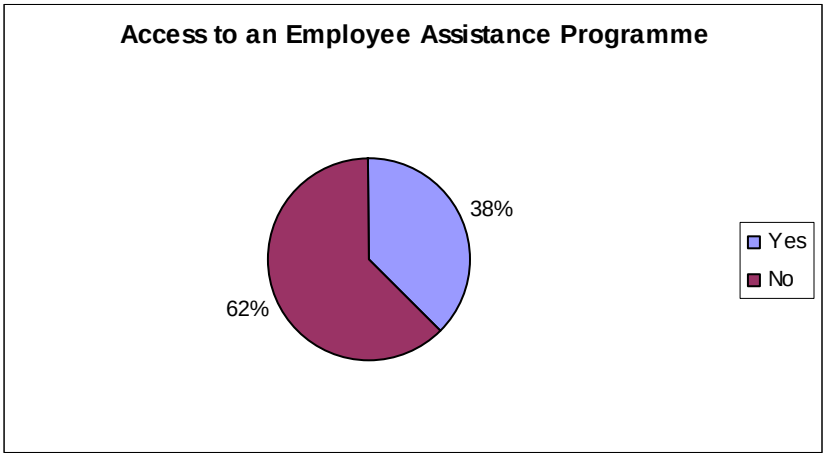
workplace. Sixteen point six percent (16.6%) of respondents indicated that they have implemented these actions and that they are in the process of ongoing evaluation with regard to these measures. As mentioned in the literature study there is a direct link between HIV and AIDS and declining productivity, rising production costs and shrinking profits. Given the nature of the disease, the effects on business will probably be felt over the next l0 years or more. Forty one point seven percent (41,7 %) of the respondents, however, indicated that they have done nothing yet in developing measures to manage HIV/AIDS.

This compares with the literature study where Whiteside and Sunter (2001:104) indicated that companies were not considering HIV/AIDS as an important business issue. The authors indicated that restructuring and economic uncertainty were overriding concerns. Companies need to develop clear strategies and intervention programmes if they want to effectively manage HIV and AIDS in the workplace. One of the intervention strategies to manage employees' personal, social or health problems including HIV/AIDS is an Employee Assistance Programme.

Question 8.2

Do you have access to an Employee Assistance Programme.

Figure 19: Whether or not employees, working for the organisations involved in the study, have access to an EAP N=16

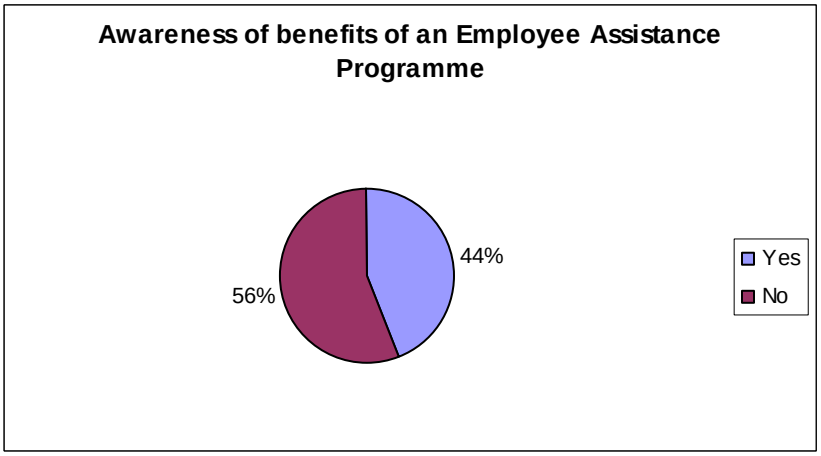


Six respondents (38%) indicated that they do have access to such a programme and ten respondents (62%) indicated that they do not have access.

Question 8.3

Are you and your managers/supervisors aware of the potential benefits of an EAP as it relates to the problem of HIV/AIDS in the workplace.

Figure 20: Whether or not employers, involved in the study, are aware of the benefits of such a programme N=16



The majority of respondents (9) indicated that they are not aware of the benefits of such a programme where as (7) respondents indicated that they are aware of the benefits. It would appear that those who do have access to such a programme are aware of the benefits. It also indicates that although employers understand the value of such a programme they still do not have it in place. The researcher could have also explored the reasons for this as this could provide agencies or service providers valuable information as to why employers do not access the service. Employers might believe that it is very useful but that it is for example just too expensive.

According to Van Den Bergh (2000:1) it may be the case that one of the most important workplace innovations of the 20th century was the development of EAP. Initially born from a concern with alcohol impaired employees, EAPs have grown to serve employees affected by a variety of stressors associated with working in rapidly changing workplaces, as well as the exigencies associated with a balance between work and family issues. HIV/AIDS is a relatively new issue, affecting all employees directly or indirectly at home and at work. Should EAP programmes prove to be an effective tool in managing HIV/AIDS in the workplace the above responses form employers would indicate that those agencies or service providers, providing EAP services, need to market their services much more aggressively to employers.

The fact that the majority of the respondents are not aware of the benefits could also be interpreted that managers and supervisors would need access to awareness training and

support systems (such as EAP programmes) to manage HIV/AIDS effectively within the workplace.

Summary

Chapter three discussed and presented the empirical findings of this study through tables and figures. Findings where structured according to the following themes:

- Unfair discrimination in the workplace based on HIV status.
- Promotion of a non-discriminatory workplace where people living with HIV/AIDS are able to be open about their HIV status without fear of stigma or rejection
- Promotion of appropriate and effective ways of managing HIV in the workplace
- Knowledge, skills and resources available to manage HIV/AIDS in the workplace

Sixteen employers participated in the study and the researcher correlated the findings with appropriate literature. However not each question was linked to literature because of the limited scope of the study. The next chapter discusses conclusions and recommendations.

CHAPTER 4

SUMMARY, CONCLUSION AND RECOMMENDATIONS

4.1 INTRODUCTION

The focus of this research project is to evaluate the extent to which employers believe they are implementing the Code of Good Practice. The limited nature of this research project made it impossible to address the issue of HIV/AIDS in the workplace in its entirety.

Important information from literature study and empirical data is discussed in this chapter. The summary of the study is outlined first. This is followed by the conclusions drawn from the study and the researcher's recommendations towards implementing the Code of Good Practice within the work environment.

4.2 SUMMARY OF THE STUDY

The study was conducted with 20 employers operating within Gauteng province. Non probability purposive sampling method was employed and comprised of 4 small, 4 medium, and 4 large companies. Data was collected by means of self administered questionnaires. Out of twenty questionnaires sent out, only sixteen were returned.

A quantitative approach was used resulting in formalised data. This ensured avoidance of adding the researcher's own impressions. An exploratory research design ensured that a

new issue namely employer's beliefs, as they relate to the Code of Good Practice, could be investigated.

Literature was sourced and compiled to provide an overview of the HIV/AIDS pandemic in South Africa. Through the literature it was clear that HIV/AIDS presented huge challenges within the socio-economic spheres within South Africa. The legal framework was also explored and the impact of the pandemic on employers was highlighted. Tables and figures were used to explore the respondents' views on the aspects of discrimination, HIV testing, disclosure of an employee's HIV status, the promotion of a safe work environment, the effect of HIV/AIDS on employee benefits, disciplinary action, grievance procedures and managing HIV/AIDS in the workplace.

4.3 SUMMARY OF EMPIRICAL FINDINGS

- Most of the employers who participated in the study are from the following two categories: community, social and personal services (18.8%) – and transport sectors (18.8%).
- A large portion, (37%) of the companies employs more than one hundred employees.
- All employers indicated that they believe there is a risk with regard to discrimination against people who are HIV positive or who has AIDS. The biggest risks were in the areas of recruitment, job assignments and dismissals.
- The majority of employers (62.5%) indicated that they had no practical measures in place to promote non-discrimination within the workplace. Only a small

number of employers (18.8%) had policies and programmes in place, which are evaluated and monitored on a regular basis.

- Half of the companies (50%)believed that they had the right to test employees to see if they are HIV- positive should there be a possible risk of transmission.
- The majority of employers (81.2%) indicated that they would test their domestic workers to see if they are HIV positive if they are employed to care for the employers' infant children.
- Most employers (68.75%) also believed that it is the employee's responsibility to disclose their HIV status to the employer.
- An alarming 37.5% have indicated that they have done nothing yet to encourage openness regarding HIV/AIDS.
- On average 23.8 % of employers indicated that they believe that they are not compliant in promoting a safe workplace for employees.
- Two employers believed it would be justified to dismiss an employee sole based on his/her HIV status.
- Most employers (37%) rated their ability to manage employees poor performance and incapacity as "average" whilst only (25 %) felt totally competent to manage these issues.
- Most employers (81%) indicated that they have grievance procedures in place and 77% indicated that these procedures were accessible to all employees within the company.
- Just over forty percent (41.7%) of all companies indicated that they have not taken any action yet with regard to managing HIV/AIDS in there work places.

- With respect to Employee Assistance Programmes the majority of respondents (62%) indicated that they do not have access to this type of support services.

4.4 CONCLUSIONS

In a country where blood was shed to rid us from structural and systematic racial discrimination during the apartheid era we now enter an era where we will have to fight against a new form of discrimination. HIV/AIDS affects the young economically active group of our society the most and therefore employers would have to play an active role against the war on HIV/AIDS. It appeared that almost half of the employers associated with this study experienced a variety of risks related to discrimination against their employees with no structures, policies or guidelines in place to prevent unfair discrimination. It would appear that this risk or the possible penalties attached to unfair discrimination is not fully understood by employers as the majority indicated that they have done nothing yet to prevent unfair discrimination from taking place. This could however also imply that companies rely heavily on their management staff rather than policies to “do the right thing” and not to discriminate during the course of there duties.

An area where there seems to be misunderstanding is the whole question around HIV- testing of employees. Employers appear to be confused and inconsistent when it comes to the issue of HIV-testing. Half of the employers who participated in the study believe they have the right to test employees when they (as the

employer) believe that there might be a risk of transmission. This is not consistent with labour legislation and companies who discriminate against employees in this regard would be liable for penalties which could be as high as paying an employee two years their salary as compensation if found guilty of unfair discrimination. The issue of HIV testing gets even more complicated as it would appear that employers do not believe the same law applies to, for example, domestic workers. The majority of employers indicated that they would have their domestic workers tested. This could indicate inconsistency in the application of labour law in that employers believe that the labour law does not apply when HIV/AIDS comes closer to home.

It would appear that part of the confusion stems from a lack of knowledge on the part of the employer as to whether or not, or when and if, the Labour Court needs to authorise the HIV testing. All employers, however, agreed that testing (without Labour Court authorisation) should be done with informed consent and pre- and post test counselling, and with strict procedures relating to confidentiality. In this regard it could be concluded that HIV/AIDS education and awareness programmes might be successful in driving home the message that confidentiality is a very important aspect related to the HIV/AIDS phenomena.

It was also interesting to note that almost a third of the employers believed that employees were legally bound to inform their employers of their HIV status. This could explain why some employers are doing nothing as they are waiting for

employees to come to them and disclose their status. It would appear that many employers, with a lack of knowledge and more questions than answers, are adopting a "wait and see" approach when it comes to HIV and AIDS.

This lack of pro-active action is also evident when it is considered that all but one of the employers indicated that they believed it is the employer's responsibility to create and encourage openness with regard to HIV and AIDS. However, if you compare this with the employers' assessment of the possible risk of discrimination and the lack of practical measures and programmes within the workplace, it would seem that this sense of responsibility is not acted on by many employers.

In conclusion it would appear that at least half of the companies in this study did not consider HIV/AIDS as a major business issue. They have no or very little strategies, policies or intervention programmes in place to address the issue effectively. Support systems such as Employee Assistance Programmes are also not utilised effectively in this regard.

4.5 RECOMMENDATIONS

Based on the fact that this was an exploratory research design, the researcher aimed at evaluating companies against the Code of Good Practice (as set out in the Labour Relations Act). The following recommendations are made:

A need to share information and gain knowledge from an employer's perspective was identified and a following research study should deal with the design and implementation of a training programme for employers (management and senior management levels) and later the evaluation of the programme. The training should allow employers who are effectively breaking down the barriers of discrimination should share their experiences (best practices) with other similar organisations and develop a shared collaborative response.

In this ongoing learning process, and any possible intervention programmes or strategies, it is recommended that all stakeholders be included. From employees, unions, non- governmental organisations in the area, to the appropriate government structures and possible support services such as EAP agencies. Occupational social workers and/or employee assistance programmes could play a vital role in this regard to establish and monitor a holistic response to the pandemic.

Employers should develop and train their managers and supervisors to enable them to identify and manage the risks involved with HIV/AIDS and to keep up with new legislative or other trends associated with dealing with HIV /AIDS in the workplace. Managers and supervisors need to competently steer and guide change processes within the organisation to ensure that the employer is seen to be visible in purposeful social change in addressing HIV/ AIDS discrimination and stigmatisation.

It is recommended that special attention be given to the issue of HIV testing within the work environment. Employers need to ensure that they understand the process of HIV testing – especially anonymous and voluntary testing – as no Labour Court authorisation is needed for this kind of testing. This kind of testing can be done at the initiative of the employer provided that the employee will not be identified and it is done truly voluntarily with informed consent (including pre- and post test counselling). This will ensure that companies can assess their HIV/AIDS risks more effectively and do succession planning based on actual figures. Employers also need to proactively shift from a "wait- and- see- approach" to a pragmatic approach in managing HIV/ AIDS in the workplace.

Individual citizens should also advocate for change in this regard and only invest and support companies who show their commitment to this fight against HIV/AIDS. Shareholders should ask companies to publicly report on their measures and programmes in addressing HIV/AIDS.

All in all this study recommends that all stakeholders need to support the efforts of companies moving towards total compliance of The Code. Finally the design and implementation of a management training programme on HIV/AIDS should be facilitated as soon as possible.

4.6 GOAL, OJECTIVES AND HYPOTHESIS

The goal of the study was successfully reached as it provided information on employers' views with regard to their efforts in implementing the Code of Good Practice on HIV/AIDS.

With regard to the objectives, a theoretical framework describing the HIV/AIDS pandemic and its impact in the workplace was presented. The employers, who participated in the study, views and/or believes regarding the extent to which they are conforming to the Code of Good Practice on HIV/AIDS was explored and evaluated. The researcher provided employers, the primary target group being the members of GEO, with specific recommendations based on the information gained.

The following hypothesis was developed as a result of the study and could serve as a source for further studies:

Should managers receive accredited training on the Code of Good Practice on HIV/AIDS they will manage the HIV/AIDS pandemic effectively, within the legal framework, in a particular work environment.

4.7 CONCLUDING REMARKS

This study achieved its overall goal in obtaining information regarding the extent to which employers believe they are implementing the Code of Good Practice on

HIV/AIDS. Part of the researcher's objectives were to evaluate employers views (against The Code as guideline) with regard to discrimination, HIV-testing and the measures and strategies they might have in place to manage the pandemic.

The research study received the support from the employers and the management of the GEO (Guardian Employers Organisation). The researcher experienced the process as a challenge and is excited by the knowledge that the goals set in the study were achieved.

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6. LIST OF APPENDIXES

APPENDIX A: Signed consent by GEO

APPENDIX B: Informed consent

APPENDIX C: Questionnaire

Research questionnaire:
CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV.

Question 1: Identifying particulars

Please fill in the relevant information below by putting a cross (x) in the correct block.

Industry sector:	Agriculture	Community, social and personal service	Catering	Accommodation
	Mining and quarrying	Manufacturing	Electricity, gas and water	Transport
	Storage	Communication	Retail	Motor trade
	Repair services	Wholesale trade	Commercial agents and allied services	Other trade
Number of employees:	0-20	21-50	51-100	More than 100

The following questions directly link to the Code of Good Practice on HIV/AIDS.

Question 2: Promoting a non-discriminatory work environment

2.1) What do you believe is the possibility that you, your managers or supervisors might directly or indirectly discriminate against an employee (or new candidate) who has told the organization that he/she is HIV positive or has AIDS, with specific relation to the following employment practices and or policies?

Practices and policies	No possibility	Slight possibility	Definite possibility
Recruitment procedures, advertising and selection criteria			
Appointments, and the appointment process, including job placement			
Job classification or grading			
Remuneration, employment benefits and terms and conditions of employment			
Employee assistance programmes			
Job assignments			
Training and development			
Performance evaluation systems			
Promotion, transfer and demotion			
Termination of service			

2.2) Indicate how far you believe you have progressed towards promoting a non-discriminatory work environment as it relates to HIV/AIDS, if you evaluate your actions based on the following measures?

Measures:	No action yet	Planning stage	Implementation stage	Ongoing implementation and evaluation
Policies and programmes for the workplace aimed at preventing unfair discrimination and stigmatization of people living with HIV and AIDS.				
Awareness, education and training on the rights of all persons with regard to HIV and AIDS.				
Mechanisms to promote acceptance and openness around HIV/AIDS in the workplace.				
Providing support systems and programmes for all employees infected or affected by HIV and AIDS.				
Developed grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.				

Question 3: HIV-testing, confidentiality and disclosure

1. As an employer do you feel you should have the right to test employees regarding their HIV-status if you believe there might be a risk of transmission? Yes / No

2. Would you have your domestic worker tested who is employed to care for your infant children? Yes / No

3. Have you ever had any employee tested for HIV? Yes / No

4. Do you believe you need authorization from the Labour Court for compulsory testing of any employee? Yes / No

5. Do you believe you need authorization from the Labour Court when employees are tested anonymously and voluntarily? Yes / No

6. Do you believe an employer may (according to the Labour Relation Act) compel an employee to be tested for HIV, without Labour Court authorization, in the following circumstances?

- As part of a health care service provided in the workplace Yes / No
- In the event of an occupational accident carrying a risk of exposure to blood or other body fluids Yes / No
- For purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids. Yes / No

Should the HIV-testing of employees always be:

- At the initiative of the employee Yes / No
- within a health care worker and employee-patient relationship Yes / No
- with informed consent and pre-and post-test counselling Yes / No
- with strict procedures relating to confidentiality Yes / No

7. Do you believe an employee is legally required to disclose his/ her HIV/AIDS status to the employer? Yes / No

8. If an employee does disclose his/her status to you (personally) indicate, with an (x), to whom you believe you may disclose this information (without having the employees express written consent to do so)

Your HR manager	
The company's medical practitioner	
His/ her immediate supervisor	
An official of your employers organization	
Your EAP representative	
Your spouse / life partner	

9. Do you believe it is the employers responsibility to encourage openness, acceptance and support for employees who voluntarily disclose their HIV status within the workplace?

Yes / No

10. If yes, how far do you believe you have progressed towards creating these mechanisms?

Mechanism	No action yet	Planning stage	Implementation stage	Ongoing implementation and evaluation
Encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes				
Encouraging the development of support groups for employees living with HIV or AIDS				
Ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatized				

Question 4: Promoting a safe workplace

1. Should an occupational accident involving body fluids occur, to what extent do you believe you are complying with the Occupational Health and Safety Act as it relates to the following aspects?

Aspects	Not compliant yet	Maybe compliant	Definitely compliant
Risk assessment of occupational transmission within the workplace			
Providing appropriate training, awareness, education on the use of universal control measures			
Providing appropriate equipment and materials to protect employees from the risk of exposure to HIV			
Developed steps (appropriate management) to be taken following an occupational accident			
The procedures to be followed in applying for compensation for occupational infection.			
The reporting of all occupational accidents			
Adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.			

2. Are you registered for workman's compensation? YES / NO

Question 5: Employee benefits

1. Does your organization contribute (partly or fully) toward a pension or provident fund for their employees? YES / NO

2. Do you contribute (partly or fully) toward a medical aid scheme? YES / NO

3. Should the employer offer employee benefits, do you believe it is the employer's responsibility to ensure that the medical scheme does not unfairly discriminate, directly or indirectly against any person on the basis of his/her HIV status? YES / NO

4. Does your organization provide paid sick leave and annual leave to employees? YES / NO
(At least equal to the days provided for in the Basic Conditions of Employment Act)

5. If an employee is HIV positive or has AIDS do you believe this will negatively affect any of his/her benefits? YES / NO

Question 6: Dismissal

1. Do you believe you may dismiss an employee solely on the basis of his/her HIV/AIDS status? YES / NO

2. Where an employee has become too ill to perform their current work, do you and your managers/supervisors know and understand the process of managing employee incapacity and poor performance as set out in Schedule 8 of the Labour Relations Act? YES / NO

3. To what extent do you believe you and your managers/supervisors are able to effectively deal with employee incapacity and poor performance

Totally ineffective	Slightly ineffective	Average	Slightly Effective	Totally effective

4. Do you believe you and your managers/supervisors might need training in managing employee incapacity and poor performance YES / NO

Question 7: Grievance procedures

1. Do you have a grievance procedure? YES / NO

2. To what extent do you believe it is accessible to all employees?

Not accessible at all	Accessible to some	Accessible to 50 % of employees	Accessible to most	Accessible to all

3. To what extent to you create awareness and understanding of your grievance procedures?

Never	Only during induction	Updated only when there are changes	Only when employees ask about it	Annual awareness programme

4. Do you have special measures in place to ensure the confidentiality of the complainant during this process? YES / NO

Question 8: Managing HIV/AIDS in the workplace

1. Evaluate your progress with regard to your strategies/actions towards effectively managing HIV/AIDS in the workplace according to the following measures:

Measure	No action yet	Planning stage	Implemen-tation stage	Ongoing implementation and evaluation
Developing a HIV/AIDS policy				
Developing a HIV/AIDS programme aimed at prevention, care, support and managing the impact of HIV/AIDS				
Assessed/researched long and short term impact of HIV/AIDS on the organization				

2. Do you have access to an Employee Assistance Programme? YES / NO

3. Are you and your managers/supervisors aware of the potential benefits of an EAP as it relates to the problem of HIV/AIDS in the workplace? YES / NO